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8	· ·	E STATE OF CALIFORNIA
9	FOR THE COUNTY	Y OF LOS ANGELES
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11	OMAR RODRIGUEZ; CINDY GUILLEN- GOMEZ; STEVE KARAGIOSIAN; ELFEGO	CASE NO. BC 414602
12	RODRIGUEZ; AND JAMAL CHILDS,	Date: May 12, 2010 Time: 9:00 a.m.
13	Plaintiffs,	Judge: Honorable Joanne O'Donnell Dept.: 37
14	V. DUDDANIK DOUGE DEDARTMENIT, CUTY	PLAINTIFF'S SEPARATE STATEMENT
15	BURBANK POLICE DEPARTMENT; CITY OF BURBANK; AND DOES 1 THROUGH 100, INCLUSIVE,	OF DISPUTED FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY HIDOMENT OF INTEREST
16	Defendants.	SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES AGAINST
17	Defendants.	PLAINTIFF ELFEGO RODRIGUEZ
18	BURBANK POLICE DEPARTMENT; CITY OF BURBANK,	[NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND
19	Cross-Complainants,	AUTHORITIES, EVIDENCE IN SUPPORT, APPENDIX OF NON-
20	V. ,	CALIFORNIA AUTHORITIES FILED CONCURRENTLY HEREWITH
21	OMAR RODRIGUEZ, an Individual;	File Date: May 28, 2009
22	Cross-Defendant.	Trial Date: August 25, 2010 Discovery Referee: Hon. Diane Wayne, Ret.
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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

1	Pursuant to California Civil Procedure Code S	ection 437c(b)(1) and Rule 3.1350 of the	
2	California Rules of Court, Defendant and Cross-Complainant City of Burbank, including the		
3	Police Department of the City of Burbank (erroneously sued as an independent entity named		
4	"Burbank Police Department") ("Burbank") submits the	he following Separate Statement of	
5	Undisputed Material Facts, together with references to	supporting evidence, in support of its	
6	Motion for Summary Judgment or, in the Alternative,	Summary Adjudication of issues against	
7	Plaintiff Elfego Rodriguez ("Rodriguez"). Each of the	e following facts is undisputed only for	
8	purposes of Burbank's Motion for Summary Judgmen	t or, in the Alternative, Summary	
9.	Adjudication of issues against Rodriguez:		
10			
1,1	<u>FIRST CAUSE OF</u>	ACTION	
12	(Discrimination under the California Fair Emp	oloyment and Housing Act ("FEHA"))	
13			
14	Issue No. 1: The First Cause of Action for discrimina	tion under the FEHA, as set forth in the First	
15	Amended Complaint ("FAC"), includes and subsumes what is actually a separate cause of action		
16	based on Burbank's transfer of Rodriguez from a Special Enforcement Detail ("SED") assignment		
17	to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue		
18	as to any material fact and Burbank is entitled to judgment as a matter of law for the following		
19	reason: As a matter of law, the transfer from SED to Patrol is not an actionable "adverse		
20	employment action," which is a necessary element of	he prima facie case for discrimination.	
21			
22	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE	
23	1. The Special Enforcement Detail unit ("SED")	AND SUPPORTING EVIDENCE Disputed. The SED unit assisted	
24	was a unit that assisted Burbank Police Department	detectives, as well as any other division	
25	("BPD" or "Department") detectives.	that needed their assistance, including	
26	Supporting Evidence: Deposition of Elfego	patrol, narcotics, and gangs. Declaration	
27	Rodriguez ("Rodriguez Depo."), (cited pages of		
28		of William Taylor ("Taylor Decl.") ¶17,	

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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	which are attached to the Declaration of Lawrence	6:12-17; Declaration of Omar Rodriguez
3	A. Michaels as Exhibit C thereto) at page:line 26:22-	("O. Rodriguez Decl.") ¶23, 6:1-12.
4	27:17.	
5	2. Rodriguez was assigned to SED from	Undisputed.
6	October 2008 until May 2009.	
7	Supporting Evidence: Rodriguez Depo.,	
8	28:15-20; Declaration of Janice Lowers ("Lowers	
9	Decl."), ¶ 4, 1:15.	
10	3. In May 2009, the SED unit was disbanded,	Undisputed.
11	and Rodriguez was transferred to a Patrol	
12	assignment.	
13	Supporting Evidence: Rodriguez Depo.,	
14	26:15-21, 43:19-20; First Amended Complaint	
15	("FAC"), (attached as Exhibit D to the Michaels	
16	Decl.), ¶ 66.	
17	4. The SED assignment did not involve any	Disputed. Plaintiff eventually lost
18	additional compensation.	overtime pay. Defendant's evidence does
19	Supporting Evidence: Rodriguez Depo., 16:	not show whether the overtime worked
20	4-15; Declaration of Trisha Welsh ("Welsh Decl."),	after May 2009 was due to remaining SED
21	¶¶ 3-5, 13:10-22; Declaration of Tim Stehr ("Stehr	work (e.g. court appearances) or patrol
. 22	Decl."), ¶ 6, 4:25-:5:2.	work. E. Rodriguez Decl. at ¶41, 8:11-12;
23	Note regarding supporting evidence: Rodriguez	O. Rodriguez Decl. ¶24, 6:1-12.
24	testified that the base rate of pay in these two	
25	assignments was the same, but asserted that more	
26	overtime work was available in the SED assignment.	
27	However, his payroll and timecard records show that	
28.		

. 1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE
2	Rodriguez actually worked <i>more</i> overtime and was	AND SUPPORTING EVIDENCE
3	paid more after he transferred back to a Patrol	
4	assignment. The payroll records show that during	
5	the portion of 2009 that Rodriguez was assigned to	
6	SED, his average weekly overtime hours were 9.75	
7	and his average weekly pay was \$2,546.43. After he	
8	was transferred to a Patrol assignment in May 2009,	
9	Rodriguez's average weekly overtime hours for the	
10	remainder of 2009 were 11.63 and his average	
11	weekly pay was \$2,574.81.	
12	5. The SED assignment did not involve any	Disputed. Special Enforcement Detail
13	change in rank.	("SED"). Of all of the specialized
14	Supporting Evidence: Stehr Decl. ¶ 6, 4:25-	assignments, e.g., bike patrol, school
15	5:2.	resources officer, SRT, FTO, gang detail,
16		the Special Enforcement Detail is the most
17		prestigious and most sought after
18		assignment.
19	•	SED is the oldest specialized detail in the
20		Department – SED has been an active
21		detail for the past thirty years.
22	. 44:	Among the most important reasons for this
23		detail's prestige are the opportunities: (a)
24		to obtain the necessary skills and
25		
26		knowledge to become a detective and/or
27		promotion in departments other than
28	i	patrol; (b) for exposure of one's skills and
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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2		talents to multiple units and divisions
3		within the department; and (c) career-
4 5		enhancing exposure to and opportunities to
6		participate in various federal, state and
.7		county law enforcement task forces
8		sponsored by agencies, such as the DEA,
9		ATF, ICE, FBI, DVM, Postal Inspectors,
10		etc. BPD does not select the officers for
11		assignment to these task forces. The task
12 13		forces identify and select the officers that
14		they want. Therefore exposure is critical,
15		and this type of exposure is not available if
16		an officer is assigned to patrol. Taylor
17		Decl. 12, 5:6-21; O. Rodriguez Decl., ¶
18		¶20-31, 5:9-7:13.
19		<u> </u>

Issue No. 2: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Because SED was disbanded, Rodriguez cannot establish that there was a job available for him in SED, which is a necessary element of the prima facie case for discrimination.

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	6. (Repeat of UF 2, above.) Rodriguez was	Undisputed.
3	assigned to SED from October 2008 until May 2009.	
4	Supporting Evidence: Rodriguez Depo.,	
5	28:15-17; Lowers Decl. ¶ 4, 1:15	
6	7. (Repeat of UF 3, above.) In May 2009, the	Undisputed.
7	SED unit was disbanded, and Rodriguez was	
8	transferred to a Patrol assignment.	
9	Supporting Evidence: Rodriguez Depo.,	
10	26:15-21; 43:19-20; FAC ¶ 66.	
11	8. Sergeant Travis Irving and Officer Steve	Disputed. Sergeant Travis Irving returned
12	Karagiosian were also transferred back to Patrol	to his administrative division assignment
13	assignments.	as Press Information Officer/Chief's
14	Supporting Evidence: Rodriguez Depo.,	
15	43:11-44:6; Deposition of Steve Karagiosian	Adjutant. S. Karagiosian Decl. at ¶30,
16	("Karagiosian Depo."), (attached as Exhibit E to	5:25-26.
17	Michaels Decl.), 19:4-22, 31:7-10.	
18	•	· ·

Issue No. 3: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Rodriguez was assigned to SED by the same person who recommended SED be disbanded, and the legal doctrine of "same actor presumption" precludes Rodriguez from establishing a prima facie case for discrimination.

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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	9. Rodriguez was selected for the SED	Disputed. Great deference is given to the
3	assignment by the Captain over the SED unit, Janice	SED sergeant in selecting SED team
4	Lowers.	members. Taylor Decl. ¶12, 5:9-13; E.
5	Supporting Evidence: Rodriguez Depo.,	Rodriguez Depo., 28:15-17; Deposition
6	28:15-17; Lowers Decl. ¶ 4, 1:15.	
7		testimony excerpts are attached to the
8		Declaration of India S. Thompson
9		("Thompson Decl."). The aforementioned
10		testimony is found at Thompson Decl.,
11		Exhibit "C".
12	10. The decision to disband the SED unit was	Disputed. When Captain Lowers informed
13	made based on the recommendation of Captain	Plaintiff and Officer Steve Karagiosian of
14	Lowers.	
15	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10;	the decision to disband SED, she expressly
16	Lowers Decl. ¶ 5, 1:17-22.	told both officers that it was not her
17		decision. See Declaration of Elfego
18	· ·	Rodriguez ("E. Rodriguez Decl.") at ¶34,
19		7:6-10.
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1 .	Issue No. 4: The First Cause of Action for discriminat	ion under the FEHA, as set forth in the
2	FAC, includes and subsumes what is actually a separate cause of action based on Burbank's	
3	transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbauded.	
4	On said cause of action, there is no triable issue as to a	ny material fact and Burbank is entitled to
5	judgment as a matter of law for the following reason:	Burbank has proffered a legitimate, non-
5	discriminatory and non-retaliatory reason for the trans-	fer, and Rodriguez cannot show that the
7	reason was pretextual.	
3		
9	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE 11. (Repeat of UF 3, above.) In May 2009, the	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE Undisputed.
1		Ondisputed.
2	SED unit was disbanded, and Rodriguez was	
3	transferred to a Patrol assignment.	
	Supporting Evidence: Rodriguez Depo.,	
4	26:15-21; 43:19-20; FAC ¶ 66.	
5	12. The SED unit was already in existence when	Undisputed.
5	Chief of Police Stehr assumed the position of Police	: :
7	Chief; he did not create the unit.	
8	Supporting Evidence: Stehr Decl. ¶ 8(b),	
9	5:22-6:3.	
0	13. (Repeat of UF 10, above.) The decision to	Disputed. When Captain Lowers informed
1	disband the SED unit was made based on the	Plaintiff and Officer Steve Karagiosian of
2	recommendation of Captain Lowers.	the decision to disband SED, she expressly
3	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10;	told both officers that it was not her
4	Lowers Decl. ¶ 5, 1:17-22.	
5		decision. See E. Rodriguez Decl. at ¶34,
5	4 .	7:6-10.
7	14. Lowers' recommendation was accepted by	Disputed. When Captain Lowers informed
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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

		and the control of the state of the control of the
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Chief Stehr, who agreed with Lowers that	Plaintiff and Officer Steve Karagiosian of
3	disbanding the unit was the best way to meet the	the decision to disband SED, she expressly
4	BPD's needs.	told both officers that it was not her
. 5	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10.	decision. See E. Rodriguez Decl. at ¶34,
6.		
. 7		7:6-10.
8	15. At the time the decision to disband SED was	Disputed. Budgetary constraints were not
9	made, the Department was facing budgetary	the reason. In her email to Plaintiff,
10	constraints which left it understaffed. These	Captain Lowers stated the reason was the
- 11	constraints had kept the Department from fully	inability to fully staff SED in its present
12	staffing SED, and left it with openings in its Patrol	configuration out of investigations. See E.
13	Division as well.	Rodriguez Decl. at ¶35, 7:11-15. See
14	Supporting Evidence: Stehr Decl. ¶ 8(a),	Taylor Decl., at ¶8, 4:12-15; ¶16, 6:10-11;
15	5:12-20; Lowers Decl. ¶ 5, 1:17-22.	¶15, 6:5-9 (explaining that Captain Lowers
16		did not mention that SED was disbanded
17		for budgetary reasons; that SED budgetary
18		cuts had occurred prior to Plaintiff being
19		assigned to SED; and that Chief Stehr said
20		he would disband SED because Captain
21		Lowers complained that Plaintiff and
22	(a)	Karagiosian acted like "jerks.").
23	16. Captain Lowers believed, and Chief Stehr	Disputed. See E. Rodriguez Decl. at ¶¶36-
24	agreed, that it was more important to address the	37, 7:16-26, Exh. B, in which Captain
25	needs of the Patrol Division than to provide	Lowers does not state such is the reason
26	additional assistance to the detectives, because the	for the disbanding of SED.
27	Patrol officers are the front-line officers who respond	for the disoanding of SED.
28	to calls for assistance and provide police presence	
	8	
	DI AINTIEP'S SEDADATE STATENCATO OF D	IGDLIEDED DA COO DA CADACCIONOLI

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	"on the street."	AND SOLI ONTING EVIDENCE
3	Supporting Evidence: Stehr Decl. ¶8(a),	
4	5:12-20; Lowers Decl. ¶ 5, 1:17-22.	
5	17. At the time the SED unit was disbanded it	Disputed. Captain Janice Lowers was also
. 6	was staffed by a Sergeant and two police officers.	a member of SED. Lowers Declaration,
7	The two officers were Rodriguez and Steve	1:8-10.
8	Karagiosian. The two other positions in SED were	
9	vacant.	
10	Supporting Evidence: Rodriguez Depo.,	
11	28:24-29:13.	
12	18. Because the SED unit could not be fully	Disputed. Budgetary constraints were not
13	staffed (due to the budgetary constraints), Chief	the reason. In her email to Plaintiff,
14	Stehr did not believe the unit could function	Captain Lowers stated the reason was the
15	effectively.	inability to fully staff SED in its present
16	Supporting Evidence: Stehr Decl. ¶ 8(a),	configuration out of investigations. See E.
17	5:12-20.	Rodriguez Decl. at ¶35, 7:11-15 Exh. A.
18		See also Taylor Decl., ¶8, 4:12-15; ¶16,
19		6:10-11; ¶15, 6:5-9 (explaining that
20		budgetary concerns were not raised at a
21		meeting in which budgetary problems of
22		other unites were discussed).
23	19. Chief Stehr did not believe that a unit that	Disputed. Chief Stehr was simply
24	focused on assisting detectives was the best way to	replacing the SED with an identical unit,
25	use BPD resources.	the SPU. The inference from the evidence
26	Supporting Evidence: Stehr Decl. ¶ 8(b),	
27	5:22-6:3.	is that SPU was ultimately not created
28		because of fears of how it would look in
	9	: .

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2		response to concerns raised such as those
3		in this lawsuit. Declaration of Tim Stehr,
4		5:22-27. See also Taylor Decl., ¶8, 4:12-
5		15; ¶16, 6:10-11; ¶15, 6:5-9. Further,
6 7		there was no need to create a new unit that
8		provided assistance to Patrol, in that SED
9		could and did provide assistance to Patrol.
10		E. Rodriguez Decl. ¶36, 7:16-19.
11	20. Chief Stehr envisioned a unit of uniformed	Disputed. Budgetary constraints were not
12	officers (SED officers were plainclothes) within	the reason. In her email to Plaintiff,
13	Patrol that would assist the Department with special	Captain Lowers stated the reason was the
14	•	· .
15	problems in all areas. Chief Stehr announced his	inability to fully staff SED in its present
16	intention to create such a Special Problems Unit at	configuration out of investigations. See
	the time he disbanded SED, but the unit has never	E. Rodriguez Decl. ¶35, 7:11-15, in which
17	been created or staffed due to budgetary constraints.	Captain Lowers does not state such is the
18	Supporting Evidence: Stehr Decl. ¶ 8(b),	reason for the disbanding of SED.
19	5:22-6:3.	
20	21. In January 2009, Chief Stehr had removed	Undisputed.
21	the Sergeant over SED, Neil Gunn, due to concerns	41 A S S S S S S S S S S S S S S S S S S
22	about the number of use of force incidents in which	· 1417
23	Gunn had been involved.	
24	Supporting Evidence: Stehr Decl. ¶ 8(c), 6:5-	
25	8.	el x
26	22. Captain Lowers had counseled Gunn that, as	Undisputed.
27	a supervisor, he should try to avoid becoming	
28		
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1	MOVING DADWING I DIDIGRY INTO A CAMPAGE	OPPOSITION AND AND AND AND AND AND AND AND AND AN
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	personally involved in use of force situations.	
3	Supporting Evidence: Lowers Decl. ¶ 6,	
⇒4	1:24-27.	
5	23. The Chief and the Captain concluded that	Undisputed.
6	Gunn was not following Captain Lowers'	
7 ·	instructions in this regard.	
8	Supporting Evidence: Stehr Decl. ¶8(d),	
9	6:10-19; Lowers Decl. ¶ 6, 1:24-27.	
10	24. Gunn was replaced as Sergeant over SED by	Undisputed.
11	Sergeant Travis Irving in January 2009.	
12	Supporting Evidence: Rodriguez Depo.,	
13	30:5-8; Stehr Decl. ¶ 8(c), 6:5-8.	
14	25. Irving was also assigned to supervisory	Disputed. Although Irving was assigned
15	duties at the Burbank animal shelter and could not	to the shelter for a short time, Sgt. Merich
16	devote his full time to supervising SED.	quickly replaced Irving at the shelter so
17 18	Supporting Evidence: Stehr Decl. ¶ 8(c), 6:5-	that Irving could go back to supervise
19	8.	SED. See O. Rodriguez Decl. ¶36, 7:16-
20		19 (at the animal shelter two to three
21,		weeks.)
22	26. Chief Stehr was concerned about the fact that	Disputed. Sgt. Irving was in charge of
23	SED had been supervised by a Sergeant, specifically	SED long before the disband order was
24	Sergeant Gunn, whose record on use of force might	given, and Irving had little or no use of
25	be subject to scrutiny.	force concerns listed as is evidenced by the
'26	Supporting Evidence: Stehr Decl. ¶ 8(d),	
27	6 :10 -1 9.	fact that Sgt. Irving was Chief Stehr's
28		<u> </u>

1	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
2	FACTS AND SUPPORTING EVIDENCE	AND SUPPORTING EVIDENCE
2		Adjutant prior to his move to SED and
3		currently once again holds such position.
1		variously once again notes such position.
4		See Disputed Fact No. 389.
5		
_	27. At the time the Chief disbanded the SED	Undisputed.
6	unit, he had recently learned of allegations that	
7		
8	Lieutenant Omar Rodriguez had used unauthorized	
0	force in interrogating a witness and had intimidated	
9		
10	another police officer into lying to cover-up his	
10	misconduct.	
.11		
12	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
12	7:3.	
13		
14	28. After learning about the allegations, Chief	Undisputed.
17	Stehr referred the matter to the Los Angeles County	
15		
16	Sheriff's Department for investigation. Chief Stehr	
10	had also recently learned that the Federal Bureau of	
17		
18	Investigation was conducting its own investigation	
	of use of force by BPD officers.	
19		
20	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
20	7:3.	
21		
22	29. Chief Stehr was concerned that officers	Disputed. Both Travis Irving and Plaintiff
	assigned to the SED unit could come under increased	had little to no history with Sgt. Gunn at
23		I mad fittle to no instory with Sgt. Outlin at
24	scrutiny based on the history of Sergeant Gunn.	SED. See E. Rodriguez Decl., ¶23, 5:10-
	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	,
25		12. And, at the time SED was disbanded,
26	7:3.	GA Turk at at a common
		Sgt. Irving had been in charge of SED for
27		many months. E. Rodriguez Decl. ¶34,
28	:	many mondis. D. Rodriguez Door. JT,
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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	THOUSTAIN BOIL ORTHOUS VIDENCES	7:7-9.
3	30. Chief Stehr's concern that officers assigned	Disputed. Both Travis Irving and Plaintiff
4	to the SED unit could come under increased scrutiny	had little to no history with Sgt. Gunn at
5	had nothing to do with any improper use of force by	SED. E. Rodriguez Decl., ¶23, 5:10-12.
6	Officer Elfego Rodriguez himself.	And, at the time SED was disbanded, Sgt.
7	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	Irving had been in charge of SED for many
8	7:3; Rodriguez Depo., 96:22-97:1 (Rodriguez	months. E. Rodriguez Decl. ¶34, 7:7-9.
9	testified that he heard rumors that SED had	Further, Plaintiff testified on page 96, line
10	developed a reputation as having "dirty cops" who	22 through page 97, line 1, that he never
11	"beat suspects," but that the rumors related to	heard negative comments about SED
12	conduct that occurred before he was in SED).	during his tenure. E. Rodriguez Depo.,
13		96:22-97:1.
14	31. Rodriguez had not been in the SED when the	Disputed. Both Travis Irving and Plaintiff
15	events giving rise to Chief Stehr's concerns about	had little to no history with Sgt. Gunn at
16	Sergeant Gunn had taken place.	SED. E. Rodriguez Decl., ¶23, 5:10-12.
17	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	And, at the time SED was disbanded, Sgt.
18	7:3.	
19		Irving had been in charge of SED for many
20		months. E. Rodriguez Decl. ¶34, 7:7-9.
21	32. UF 15 through 31, above, set out-the reasons	See responses to UF 15 and 31 above and
22	why Chief Stehr accepted Captain Lowers'	incorporate by reference herein. The
23	recommendation to disband SED.	reference to Chief Stehr purportedly not
24	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-	
25	6:19. Evidence that Rodriguez himself cannot	having any dislike for Hispanic or
26	dispute these reasons is his testimony that:	Guatemalan people is because Plaintiff is
27	(1) He has no basis for thinking that Chief Stehr had	of Guatemalan descent. E. Rodriguez
28	any dislike for Hispanic or Guatemalan people	
	13	

. 1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	(Rodriguez Depo., 384:11-16);	Decl. ¶2, 2:2.
3	(2) His response in deposition, when asked whether	
4	he believed that the closure of SED had anything to	
5	do with his ethnicity or national origin: "Not	
6	necessarily, per se."	
7 8	"Q Do you believe that the fact that I'm sorry. Do	
9	you believe that your ethnicity or national origin played any role in the decision to close SED?	
10	[Objection omitted.]	
11	THE WITNESS: Not necessarily, per se."	
12	Rodriguez Depo., 443:16-21.	
13	(3) His testimony that his belief that he was	
14	retaliated against was just a "feeling" on his part.	
15	(Rodriguez Depo., 349:5-19); and	
16	(4) His testimony that his belief that the closure of	
17	SED was intended to hurt him was speculation on his	
18	part:	
19	"Q. The chief made the decision to close SED; correct?	
20	[Objection omitted.]	
21	THE WITNESS: Yes.	- Table 1
22	Q. BY MR. MICHAELS: And in making that decision, he intended to hurt you and Officer	E-Y
23	Karagiosian, but not the sergeant in charge of that division, Sergeant Irving. That's your opinion;	
24	correct?	
25	[Objection omitted.]	Jan San San San San San San San San San S
26	THE WITNESS: Yes.	100 mm
27 28	Q. BY MR. MICHAELS: And that is speculation on your part; correct?	
20		<u> </u>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
A. Yes."	AND BUILDKING LVIDLACE
Rodriguez Depo., 46:21-47:10.	
	1.00
Issue No. 5: The First Cause of Action for discriminat	ion under the FEHA, as set forth in the
FAC, includes and subsumes what is actually a separat	e cause of action based on Burbank's
decision not to select Rodriguez first for a position on	the Special Response Team ("SRT,"
commonly known as the "SWAT" Team). On said cau	use of action, there is no triable issue as to
any material fact and Burbank is entitled to judgment a	as a matter of law for the following reason:
As a matter of law, Burbank's decision not to choose I	Rodriguez first for the SWAT Team position
is not an actionable "adverse employment action," whi	ch is a necessary element of the prima facie
case for discrimination.	
MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
33. Rodriguez was assigned to the SWAT Team	Undisputed.
in February or March 2009.	
Supporting Evidence: Rodriguez Depo.,	
143:19-23.	
34. Rodriguez voluntarily left his SWAT Team	Undisputed.
assignment in late 2009 in order to accept an	
assignment on the U.S. Marshall's Task Force.	
Supporting Evidence: Rodriguez Depo.,	Negto
449:11-23.	: 20
35. The SWAT Team trains one day a month.	Disputed. The SWAT Team "is supposed
Supporting Evidence: Rodriguez Depo.,	to" train one day a month. Rodriguez
137:15-19.	Depo., 137:15-19.
36. During the time Rodriguez was on the SWAT	Undisputed.
Team, he was never actually called out on an	
15	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	assignment. Rodriguez is aware of only one	AND SOLI ORTHNO EVIDENCE
3	occasion where the SWAT Team was called out	
4	during the time he was on the SWAT Team. He	
5	missed that assignment because he was out of range	
6	to receive the call out on his cell phone.	
7	Supporting Evidence: Rodriguez Depo.,	
.8	143:16-17, 159:25-160:23; Declaration of Patrick	
9	Lynch ("Lynch Decl.") ¶ 3, 8:11-15.	
10	37. Members of the SWAT Team receive no	Undisputed.
11	extra compensation for the assignment.	
12	Supporting Evidence: Lynch Decl. ¶ 4, 8:17-	
13	20.	
14	38. Members of the SWAT Team receive no	Disputed. If an officer is ambitious, after
15	change in rank.	he masters patrol responsibilities, he next
16	Supporting Evidence: Lynch Decl. ¶ 4, 8:17-	desires to get out of Patrol and be assigned
17	20.	
18		to a specialized unit like SWAT (SRT).
19		Declaration of Steve Karagiosian, ¶ 14,
20		4:13-16.
21		
22	r Sa#	· · · · · · · · · · · · · · · · · · ·
23		
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	PLAINTIFF'S SEPARATE STATEMENT OF D	ISPUTED FACTS IN OPPOSITION

Issue No. 6: The First Cause of Action for discrimination under the FEHA, as set forth in the
FAC, includes and subsumes what is actually a separate cause of action based on Burbank's
decision not to select Rodriguez first for a position on the SWAT Team. On said cause of action,
there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of
law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-
retaliatory reason for its decision not to choose Rodriguez first for the SWAT Team position, and
Rodriguez cannot show that the reason was pretextual.

	9	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
:	10	39. The SWAT Team is a unit which responds to	Undisputed.
	11	specific types of emergencies, such as hostage	
	12	situations and serving high risk search or arrest	
	13	warrants.	
	14	Supporting Evidence: Lynch Decl. ¶ 3, 8:11-	
	15	15.	
	16	40. Officers wishing to serve on the SWAT	Undisputed.
	17	Team must have at least two years of service on the	
	18	BPD and must pass a shooting range test and a	
	19	physical agility/obstacle course test.	
	20	Supporting Evidence: Rodriguez Depo.,	
	21	112:21-25, 113:9-25; Lynch Decl. ¶ 4, 8:17-20.	
A ²	22	41. Three other officers were selected for the	Undisputed.
	23	SWAT assignment ahead of Rodriguez: Jeff Barcus,	
	24	Adam Cornils and Steve Turner.	
-	25	Supporting Evidence: Rodriguez Depo.,	
	26	128:21-129:10.	
	27	42. Officer Barcus had worked as a Deputy	Undisputed.
	28.	:	<u> </u>

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	County Sheriff before joining the BPD, and had	AND BOTT ORTING EVIDENCE
3	worked on the Sheriff Department's Emergency	
4	Response Team.	
5	Supporting Evidence: Lynch Decl. ¶ 5(a),	
6	8:27-9:4. Evidence that Rodriguez himself cannot	
7	dispute this fact is his testimony that he has no	
8	information about the qualifications of Officer	
9	Barcus to be on the SWAT Team. Rodriguez Depo.,	
10	144:18-20.	
11	43. Officer Cornils had previously worked for	Undisputed.
12	the Monrovia Police Department, and spent four	
13	years as a member of their SWAT-type team and of	
14	a multi-jurisdictional SWAT-type team serving	
15	Monrovia and adjacent jurisdictions.	
16	Supporting Evidence: Lynch Decl. ¶ 5(b),	
17	9:6-10. Evidence that Rodriguez himself cannot	
18	dispute this fact is his testimony that he has no	
19	information about the qualifications of Officer	
20	Cornils to be on the SWAT Team. Rodriguez Depo.,	
21	144:21-23.	
22	44. Officer Turner was a former Marine Corps	Undisputed.
23	infantryman, fire team leader, and qualified expert	
24	marksman, and was trained in close quarters combat	
25	tactics.	
26	Supporting Evidence: Lynch Decl. ¶ 5(c),	
27	9:12-14. Evidence that Rodriguez himself cannot	
28		<u> </u>

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	dispute this fact is his testimony that he has no	71110 BOTT ORTHVO DVIDDINOD
· 3	information about the qualification of Officer Turner	
4	to be on the SWAT Team. Rodriguez Depo.,	
5	144:24-145:1.	
6	.45. Rodriguez did not have the same training and	Former Military training is not an
7	experience as Barcus, Cornils or Turner.	appropriate qualification for SWAT. See
8	Supporting Evidence: Lynch Decl. ¶ 6, 9:16-	Declaration of Christopher Dunn ("Dunn
9 10	17.	Decl.") at ¶4, 2:12-14; ¶5, 2:15-24. Prior
10		experience working on the Sheriff
12		Department's "Emergency Response
13	·	Team" in the jails (everybody is a part of
14		the Emergency Response Team in the
15		jails) is not an appropriate qualification for
16		SWAT. See Dunn Decl. at ¶6, 2:25-3:4.
17		Therefore, Plaintiff Rodriguez did have the
18 19		same qualifications as Officers Turner and
20		Barcus.
21	46. The decision to select Officers Barcus,	Undisputed.
22	Cornils, and Turner for the SWAT Team before	· 26
23	Rodriguez was made by Captain Pat Lynch.	
24	Supporting Evidence: Lynch Decl. ¶ 7, 9:19-	
25	25.	
26	47. Captain Lynch's decision to select Officers	Former Military training is not an
27	Barcus, Cornils, and Turner for the SWAT Team	appropriate qualification for SWAT. See
28		

	<u>la contrata de la c</u>	
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	before Rodriguez was based on the qualifications of	Dunn Decl. at ¶4, 2:12-14. Prior
3	these officers, including the fact that each of Officers	experience working on the Sheriff
4	Barcus, Cornils and Turner had past experience and	Department's "Emergency Response
5	special training which made them particularly well-	Team" in the jails (everybody is a part of
6	qualified for SWAT Team duties, and the fact that	
7	Barcus, Cornils, and Turner performed better than	the Emergency Response Team in the
8	Rodriguez on the shooting range test and/or the	jails) is not an appropriate qualification for
9	physical agility/obstacle course test.	SWAT. See Dunn Decl. at ¶6, 2:2-3:4.
10	Supporting Evidence: Lynch Decl. ¶ 5, 8:22-	Therefore, Plaintiff Rodriguez did have the
11	9:14 and ¶ 7, 9:19-25.	same qualifications as Officers Turner and
12	Evidence that Rodriguez himself cannot dispute this	Barcus.
13	fact is his testimony that he has no information about	
14	the qualifications of the officers who were selected	
15	for the SWAT Team, or why those officers were	
16	selected:	
17	"Q. BY MR. MICHAELS: What do you know about the qualifications of Officer Barcus to be on	
18	the SWAT team?	
19	A. Nothing.	
20	Q. What do you know about the qualifications of Officer Cornils to be on the SWAT team?	
21		• •
22	A. Nothing.	· 24
23	Q. What do you know about the qualifications of Officer Turner to be on the SWAT team?	
2,4	A. Nothing."	
25	(Rodriguez Depo., 144:18-145:1)	
26	***	1.2.
27	"BY MR. MICHAELS: What factors were the	
28.	deciding factors in selecting Officer Barcus over the other officers on the list when he was selected?	

1	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
2	FACTS AND SUPPORTING EVIDENCE	AND SUPPORTING EVIDENCE
3	[Objection omitted.]	
4	THE WITNESS: I don't know.	
5	Q. BY MR. MICHAELS: Same question for Officer Cornils.	
6	[Objection omitted.]	
7	THE WITNESS: I don't know.	
8	Q. BY MR. MICHAELS: Same question for Officer Turner.	
	[Objection omitted.]	
10	THE WITNESS: I don't know."	
11	(Rodriguez Depo., 147:7-22.)	
12		
13	Rodriguez also testified that his belief that he was	
14	retaliated against was just a "feeling" on his part.	
15	Rodriguez Depo., 349:5-19.	
16		
17	48. When Rodriguez was selected for the SWAT	Undisputed.
18	Team, he was selected ahead of other applicants who	· .
- -		, · · · · · · · · · · · · · · · · · · ·
19	were white.	
19 20	were white. Supporting Evidence: Lynch Decl. ¶ 8, 10:1-	
20		
20 21	Supporting Evidence: Lynch Decl. ¶ 8, 10:1-2.	
202122	Supporting Evidence: Lynch Decl. ¶ 8, 10:1-2.	tion under the FEHA, as set forth in the
20212223	Supporting Evidence: Lynch Decl. ¶ 8, 10:1- 2. Issue No. 7: The First Cause of Action for discrimina	tion under the FEHA, as set forth in the
202122	Supporting Evidence: Lynch Decl. ¶ 8, 10:1- 2. Issue No. 7: The First Cause of Action for discriminal FAC, includes and subsumes what is actually a separa	tion under the FEHA, as set forth in the te cause of action based on Burbank's
20212223	Supporting Evidence: Lynch Decl. ¶ 8, 10:1- 2. Issue No. 7: The First Cause of Action for discrimina	tion under the FEHA, as set forth in the te cause of action based on Burbank's nment to train another officer (the

material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a

matter of law, Burbank's decision not to select Rodriguez for the temporary training assignment is

27

28

1	not an actionable "adverse employment action," which	is a necessary element of the prima facie
2	case for discrimination.	
3	t,	
4	MCVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
5	49. Rodriguez was not chosen to fill in as a	Disputed. Plaintiff Rodriguez was not
6	temporary training officer for a one-week period	chosen as an FTO, and Officers who were
7	while the regular training officer was on vacation	unqualified and had much less experience
8	during the period from June 27 through July 4, 2009.	where chosen in his place. E. Rodriguez
9	Supporting Evidence: Rodriguez Depo.,	
10	19:13-20:5; Declaration of Eric Rosoff ("Rosoff	Decl., ¶42, 8:13-20; O. Rodriguez Decl.
11	Decl.") ¶ 3, 11:7-13.	¶¶18-19, 4:24-5:5.
12	50. The temporary training assignment (which	Undisputed.
13	lasted for one week) did not involve any additional	
14	compensation.	
15	Supporting Evidence: Rodriguez Depo.,	
16	21:5-15.	
17	51. The temporary training assignment (which	Undisputed.
18	lasted for one week) did not involve any change in	
19	rank.	
20	Supporting Evidence: Stehr Decl. ¶ 7, 5:4-5.	
21	52. Rodriguez had served as a Field Training	Undisputed.
22	Officer from January 2007 until to October 2008.	.+3
23	Supporting Evidence: FAC ¶ 60; Stehr Decl.	
24	¶ 6, 4:25-5:2.	
25		
26	Issue No. 8: The First Cause of Action for discrimina	tion under the FEHA, as set forth in the
27	FAC, includes and subsumes what is actually a separa	te cause of action based on Burbank's
28	decision not to select Rodriguez for a temporary traini	ng assignment. On said cause of action,
	22	· · · · · · · · · · · · · · · · · · ·

PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

1	there is no triable issue as to any material fact and Burl	pank is entitled to judgment as a matter of
2	law for the following reason: Burbank has proffered a	legitimate, non-discriminatory and non-
3	retaliatory reason for its decision not to select Rodrigue	ez for the temporary training assignment,
4	and Rodriguez cannot show that the reason was pretex	tual.
5		
, 6	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
7	53. (Repeat of UF 49, above.) Rodriguez was	Disputed. Plaintiff Rodriguez was not
8	not chosen to fill in as a temporary training officer	chosen as an FTO, and Officers who were
9	for a one-week period while the regular training	unqualified and had much less experience
10	officer was on vacation during the period from June	where chosen in his place. E. Rodriguez
11	27 through July 4, 2009.	
12	Supporting Evidence: Rodriguez Depo.,	Decl., ¶42, 8:13-20; O. Rodriguez Decl.
13	19:13-20:5; Rosoff Decl. ¶ 3, 11:7-13.	¶¶18-19, 4:24-5:5.
14	54. The officers assigned to fill in as temporary	Undisputed.
15	training officers during this week were Officers	·
16	Krueger and Edwards.	
17	Supporting Evidence: Rodriguez Depo.,	
18	23:1-13; Rosoff Decl. ¶ 3, 11:7-13.	
19	55. Officers Kruger and Edwards were selected	Given the required FTO training and
20	by the Watch Commander, Lieutenant Eric Rosoff,	minimum BPD experience requirements,
21	based on the fact that they were good officers who	the proffered reason given for assigning
22	had been working continuously in Patrol for at least,	two patently unqualified officers for the
23	a year and who had expressed an interest in	
24	becoming regular Field Training Officers; Rosoff	assignment is pretext. See E. Rodriguez
25	wanted to assist them in their career development by	Decl., ¶42, 8:13-20; O. Rodriguez Decl.,
26	giving them an opportunity to act as Field Training.	¶¶18-19, 4:24-5:7.
27	Officers.	
28		

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Rosoff Decl. ¶ 4, 8:12-	
3	16.	
4	56. (Repeat of UF 52, above.) Rodriguez had	Undisputed.
_. 5	served as a Field Training Officer from January 2007	
6	until October 2008.	
7	Supporting Evidence: FAC ¶ 60; Stehr Decl.	
8	¶ 6, 4:25-5:2.	
9		
10	Issue No. 9: Burbank is entitled to summary adjudicat	tion as to the entire First Cause of Action for
11	discrimination in violation of the FEHA, as set forth ir	the FAC, because Burbank is entitled to
12	summary adjudication as to each of the claims include	d and subsumed therein, for the reasons
13	stated in Issues 1 through 8, infra.	
14		
15	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE
16 .	57. Rodriguez identifies the three decisions	AND SUPPORTING EVIDENCE Disputed. Rodriguez also identifies that he
17	described above (that is, his transfer from an SED	was assigned to the worst possible Patrol
18	assignment to an assignment in Patrol, the fact that	shift (the worst job in the Department)
19	he was not the first officer selected for a position on	following the disbanding of SED.
20	the SWAT Team, and Burbank's failure to choose	Podriguez Dono. 201.15 202.16. 206.4 8.
21	him for a temporary assignment training another	Rodriguez Depo., 201:15-202:16; 206:4-8;
22	officer) as the only three reasons he was dissatisfied	Deposition of Steye Karagiosian (attached
23	with his employment.	to Thompson Decl. as Exh. "E"), 19:21-
24	Supporting Evidence: Rodriguez Depo.,	25; E. Rodriguez Decl. ¶40, 8: 8-10. Other
25	26:1-14.	reasons Plaintiff testified that he was
26	Julius 1	"dissatisfied" included the hostile work
27		environment which he complained about
28		Christianent which he complained about

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2		to Lt. Dermenjian in April 2009, just over
. 3		a month prior to disbanding SED. See
. 4		Disputed Facts No. 382 supra. This
5.		included the use of racially and ethnically
6 7		derogatory language at the Burbank Police
8		Department both in Plaintiffs presence,
9		and outside of Plaintiff's presence. See
10		Disputed Fact Nos. 406 -525.
11	58. Rodriguez is currently employed by the BPD.	Disputed. Plaintiff was placed on
12	Supporting Evidence: Lowers Decl. ¶ 3,	administrative leave on March 30, 2010,
13 14	1:12-13; FAC ¶ 4.	with a recommendation for termination. E.
15		Rodriguez Decl., ¶43, 8:22-25. E.
16		Rodriguez Decl., Exh. E.
17	59. Rodriguez has not been disciplined during his	Disputed. Plaintiff has been investigated
18	employment with the BPD.	and is now on administrative leave with
19	Supporting Evidence: Rodriguez Depo.,	recommendation to terminate E.
20 .	442:22-23.	Rodriguez. E. Rodriguez Decl., ¶¶ 43-44,
21	: 1~	8:22-28.
22 23	60. Rodriguez has not been denied a promotion	Disputed. Plaintiff's promotion to SRT
24	during his employment with the BPD.	("SWAT") was delayed twice, once in
25 .	Supporting Evidence: Rodriguez Depo.,	2007 and again in 2008 in favor of lesser
26	17:15-20.	qualified Caucasians. See E. Rodriguez
27		Decl., ¶19, 4:23-25. Plaintiff received a
28		Doon, 17, π.23-23. 1 Idilitiii Icceiγcu a
	25	

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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2		demotion when SED was dismantled, and
3		he was moved back to Patrol. See E.
4		Rodriguez Decl., ¶37-42, 7:2-8:20; E.
5		Rodriguez Depo., 139:11-140:9.
. 6		
7	61. Each of the performance evaluations	Undisputed.
8	Rodriguez has been given during his employment	
9	with the BPD reflected the fact that he had been	
10	performing his job in an above-satisfactory or better	
11	manner.	
12	Supporting Evidence: Rodriguez Depo., 333:	
13	18-25.	
14	62. Rodriguez sought four special assignments	Disputed. Plaintiff's promotion to SRT
15	and got all of them: Field Training Officer, Special	("SWAT") was delayed twice, once in
16	Enforcement Detail, Special Response (or SWAT)	2007 and again in 2008 in favor of lesser
17	Team, and U.S. Marshall's Task Force.	qualified Caucasians. See E. Rodriguez
18	Supporting Evidence: Rodriguez Depo.,	
19	18:24-19:2, 25:4-16, 28:15-17, 143:16-23, 449:9-20.	Decl., ¶19, 4:23-25. Plaintiff received a
. 20		demotion when SED was dismantled, and
21		he was moved back to Patrol. See E.
22	1	Rodriguez Decl., ¶¶37-42, 7:2-8:20; E.
23		Rodriguez Depo., 139:11-140:9.
24	63. Rodriguez does not know of any white	Undisputed.
25	officer in the BPD who has a better track record than	Omnopulou.
26		
27	Rodriguez himself in getting every assignment and	
	duty they requested.	
28		**************************************

MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
FACTS AND SUPPORTING EVIDENCE Supporting Evidence: Rodriguez Depo.,	AND SUPPORTING EVIDENCE
472:13-18.	
64. Burbank incorporates by reference	Plaintiff incorporates by reference his
Undisputed Material Fact Nos. 1 through 56 above.	responses to Facts Nos. 1 through 56 her
	,
SECOND CAUSE O	OF ACTION
(Harassment under	the FEHA)
Issue No. 10. There is no triple issue on to one mate	wiel feet and Runhank is antitled to in-law
<u>Issue No. 10</u> : There is no triable issue as to any mate	
as a matter of law on the Second Cause of Action for	harassment in violation of the FEHA
because Rodriguez was not subjected to severe or per	vasive harassment.
MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
FACTS AND SUPPORTING EVIDENCE	AND SUPPORTING EVIDENCE
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous	1
FACTS AND SUPPORTING EVIDENCE	AND SUPPORTING EVIDENCE
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo.,	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15.	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20.
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo.,	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15.	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20. Undisputed.
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15. 66. Rodriguez did not send the anonymous letter,	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20.
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15. 66. Rodriguez did not send the anonymous letter, and he does not know who did. Supporting Evidence: Rodriguez Depo.,	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20. Undisputed.
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15. 66. Rodriguez did not send the anonymous letter, and he does not know who did. Supporting Evidence: Rodriguez Depo., 235:3-5.	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20. Undisputed.
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15. 66. Rodriguez did not send the anonymous letter, and he does not know who did. Supporting Evidence: Rodriguez Depo.,	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20. Undisputed.
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15. 66. Rodriguez did not send the anonymous letter, and he does not know who did. Supporting Evidence: Rodriguez Depo., 235:3-5.	AND SUPPORTING EVIDENCE Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20. Undisputed.
FACTS AND SUPPORTING EVIDENCE 65. The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers. Supporting Evidence: Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15. 66. Rodriguez did not send the anonymous letter, and he does not know who did. Supporting Evidence: Rodriguez Depo., 235:3-5. 67. An outside attorney/investigator, Irma	Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20. Undisputed.

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Rodriguez Depo.,	to produce the report authored by Moisa in
3	238:1-8; Stehr Decl. ¶ 3, 4:12-15.	connection with her investigation. See
4		Declaration of India S. Thompson at ¶17,
5		3:13-17.
7	68. Moisa interviewed more than a dozen	Undisputed.
8	officers in Spring 2008.	
9 .	Supporting Evidence: Rodriguez Depo.,	
10	345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.	
11	69. Rodriguez was one of the officers	Undisputed.
12	interviewed by Moisa.	
13	Supporting Evidence: Rodriguez Depo.,	
14	238:9-10.	
15	70. Rodriguez did not seek out Moisa to make	Undisputed.
16	any report or complaint. Moisa contacted him for an	
17	interview.	
18	Supporting Evidence: Rodriguez Depo.,	
19	349:24-350:11.	
20	"Q: But it was not a case of you voluntarily initiating a contact with her to make a complaint. You	
21	responded to a request to be interviewed; correct?	
22	A: Yes." 2:	1.49
23	71. When he was interviewed by Moisa,	Disputed. Plaintiff Rodriguez specifically
24	Rodriguez told her that he had heard some	stated that Officer Kendricks said:
25	derogatory comments made about Hispanics years	"Mexican's messed up Burbank." E,
26	before, when he was a probationary officer, but that	Rodriguez Depo., 240:3-8:
	since he had become a more experienced officer	
27		

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	presence.	Not all of the derogatory comments
3	Supporting Evidence:	recalled by Plaintiff were made in the first
4	"Q. Other strike that. You co you recall telling Irma Rodriguez that when you were a new officer	year or so of his career; most of the
5	a young officer in the department, still on probation, or shortly thereafter, that you had heard derogatory	comments were, but some were heard
6	remarks, but you couldn't recall exactly what they were, made about Hispanics?	through the time he complained to Lt.
7	A. Yes.	Dermenjian. E. Rodriguez Depo., 201:10-
8	Q. Do you recall telling Irma Rodriguez that since	
9	you had become a more experienced officer, that people knew you had a strong personality and that	206:4-8. E. Rodriguez Decl., ¶¶21-22,
.10	now nobody would make a statement like that, negative about Hispanics, in your presence?	5:2-9.
11	A. Something to that effect."	
12	(Rodriguez Depo., 242:6-18.)	
13	***	
14 15	"Q. Okay. Did any of these remarks get said after you were on probation in your presence?	
16	[Objection omitted.]	
17	Q. BY MR. MICHAELS: After the time that you successfully completed your probation.	
18	A. Most of these comments I heard were earlier in	
19	my career, right around that time, my first year don't know specifically if some bridged that line after	
20	after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't	
21	hear those comments after I left that."	
22	(Rodriguez Depo., 248:5-16.)	
23	72. Rodriguez told Moisa he heard Hispanics	Undisputed.
24	referred to as "paisas" (Spanish slang for	
25	countryman or "paisano"), "12500's" (reference to	
26	the Vehicle Code Section prohibiting driving without	
27	a licenses), "those people" or "your peeps," and	
28	1. 2.	

	1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	2	"Mojados." Rodriguez also told Moisa he had heard	AND SUPPORTING EVIDENCE
	3	comments about Armenians.	
	4	Supporting Evidence: Rodriguez Depo.,	e.
·	5	241:9-12, 243:5-244:24, 244:25-245:12, 245:18-	
	6	246:5, 246:6-246:9.	
	7	73. Rodriguez began working for the BPD in	Undisputed.
	8	2004.	
	9 .	Supporting Evidence: Rodriguez Depo.,	
	10	126:24 – 127:1.	
	11	74. Rodriguez identified only two individuals	Disputed. Plaintiff Rodriguez testified that
	12	who made any of these remarks: Officers Aaron	"numerous officers" made other race-
	13	Kendrick and Jared Cutler.	based remarks, though at that time of his
	14	Supporting Evidence: Rodriguez Depo.,	
	15	240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-	deposition, Plaintiff did not specifically
	16	12, 406:5-13, 406:14-20.	recall any names other than Officers Cutler
	17	"Q. Do you recall anyone specifically who made those remarks?	and Kendrick. See E. Rodriguez Depo.,
	18	A. I've heard Kendrick refer to them as 'your	240:11-19.
	19	peeps' several times.	
	20	Q. Anyone else?	
	21	A. Cutler.	
	22	Q. Anyone else?	
	23	A. Not specifically."	
	24	Rodriguez Depo., 245:23-246:5.	
	25	75 Officer Vendriels was disciplined as a regult	Disputed Statement is not supported by
	26	75. Officer Kendrick was disciplined as a result	Disputed. Statement is not supported by
	27	of Moisa's investigation and a follow-up internal	evidence. At page 248, lines 17-23 of
	28	investigation.	
		30	·

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Rodriguez Depo.,	Plaintiff's deposition, Plaintiff indicated
3	248:17-23; Stehr Decl. ¶ 5, 4:21-23.	that he did not know whether Kendrick
4		was disciplined and that there were
5		"rumors both ways." See E. Rodriguez
6		
7		Depo., 248:24-249:12.
8	76. Officer Cutler left the Department before any	Disputed. Statement is not supported by
9	discipline resulting from Moisa's investigation could	evidence. At page 248, lines 17-23 of
10	be considered.	Plaintiff's deposition, Plaintiff indicated
11	Supporting Evidence: Rodriguez Depo.,	that he did not know whether Kendrick
12	248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.	was disciplined and that there were
13		_
14		"rumors both ways." See E. Rodriguez
15		Depo., 248:24-249:12.
16	77. Rodriguez's report to Moisa was accurate	Disputed. The purported fact is a
17	and complete.	mischaracterization of the evidence. As
18	Supporting Evidence:	set forth in the adjacent, Plaintiff
19	"Q. So you told the truth, the whole truth, and nothing but the truth to Irma Moisa Rodriguez –	Rodriguez recalled telling the investigator
. 2,0		
21	A. As I remember it, yes."	the truth, but the evidence does not support
22	(Rodriguez Depo., 238:11-239:5.)	an inference that Plaintiff told the
23		investigator everything that happened to
24		him. Therefore, the evidence does not
25		support the statement that Plaintiff's report
26	100 Ac.	was "complete." See E. Rodriguez Depo.,
27		238:11-239:5.
28		230.11-237.3.
	# ·	•

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	78. Rodriguez reaffirmed in his deposition	Disputed. Mischaracterization of the
3	testimony what he had told Moisa: that all of the	evidence. Plaintiff Rodriguez stated in his
4	derogatory comments he could recall were made	deposition that most <u>not all</u> of the
5	during the first year or so of his career.	derogatory comments he recalled were
6	Supporting Evidence:	
. 7	"Q. Okay. Did any of these remarks get said after you were on probation in your presence?	made during the first year or so of his
8		career. In fact, the specific language is
9	MR. GRESEN: Objection. Vague and ambiguous as to "after you were on probation."	cited in the adjacent box. See E.
10	Q. BY MR. MICHAELS: After the time that you	Rodriguez Depo., 248:5-16.
11	successfully completed your probation.	
12	A. Most of these comments I heard were earlier in my career, right around that time, my first year on. I don't know specifically if some bridged that line	
13	after after the year mark. But shortly after that I	
14	left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."	
15	(Rodriguez Depo., 248:5-16.)	
16		
17	79. Rodriguez initially testified that his report to	Disputed. Mischaracterization of the
18	Moisa included all of the derogatory terms he could	evidence. Plaintiff Rodriguez does not
19	recall hearing about Hispanics.	mention the investigator in his deposition.
20	Supporting Evidence: Rodriguez Depo.,	See E. Rodriguez Depo., 246:13-247:10.
21	246:13-247:10.	The transcript does not support the
22		
23		statement made in undisputed fact number
24		79.
.25	80. Rodriguez later testified to hearing the	Undisputed.
26	additional terms "gardeners," "Julios," "half breed,"	
27	and "wetback."	
28	Supporting Evidence: Rodriguez Depo.,	
	32	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	AND BOTT ON THIS DATE OF
3	429:21.	
4	81. Rodriguez is unable to remember who made	Disputed. Plaintiff Rodriguez remembers
5	any of the comment identified in UF 80, or when	the context in which the derogatory terms
6	these terms were used, or the context in which they	were used and, therefore, the time frame
7	were used.	may be established by his work history.
8	Supporting Evidence: Rodriguez Depo.,	For average Disjutiffing form to the town
9	420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	For example, Plaintiff refers to the term
10	429:21.	"wetback" referred to Hispanics.
11		E. Rodriguez Depo., 429:10. Plaintiff
12		Rodriguez refers to the term "Julios" being
13		used in connection with a Hispanic
14		burglary in which the suspects were
15 16		referred to as "Julios." E. Rodriguez
17		Depo., 425:17-22. Plaintiff Rodriguez also
18		refers to "gardeners" being used to refer to
19		Hispanics. E. Rodriguez Depo., 423:6-
20		424:4.
21	82. Sergeant Kelly Frank made the following	Disputed. In his Declaration, Kelly Frank
22	remark to Rodriguez during Rodriguez's first year to	was unsure when the remark was made,
23	eighteen months in the BPD: "You look like the bad	stating that it could have been anytime
24	guys we chase."	
25	Supporting Evidence: Rodriguez Depo.,	within the last three years. Frank
26	310:13-310:23.	Declaration, ¶3, 11:8-11.
27		D: 44 P 4 1 1 1 1
28.	83. In making this comment, Frank was referring	Disputed. Frank admits making the

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	to the mid-1960's Chevrolet Rodriguez drove, which	statement that "you" look like the bad
3	Frank felt looked like the type of car the Burbank	guys we chase. DF #82. Frank did not say
4	Police Department often sees driven by street racers.	"your car" looks like the bad guys we
5	Frank did not make this comment for any reason	chase. Further, Detective Frank said these
6	related to Rodriguez's ethnicity or national origin.	and and an District FD advices of your
7	Supporting Evidence: Declaration of Kelly	words when Plaintiff Rodriguez was
8	Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-	outside of his car and he referred directly
9	20.	to Plaintiff Rodriguez. As a result, a trier
10		of fact could find that Detective Frank was
11		not referring to the car and was, in fact,
12		referring to Elfego Rodriguez. See also E.
13	· · · · · · · · · · · · · · · · · · ·	Rodriguez Decl., ¶¶6-7, 2:19-3:2.
14		
	84. Rodriguez never asked Frank what he had	Undisputed.
15	64. Rodriguez never asked Frank what he had	Charspatou.
15 16	meant by this comment.	Oldisputed.
		Oldisputed.
16	meant by this comment.	Oldisputed.
16 17	meant by this comment. Supporting Evidence: Rodriguez Depo.,	Disputed. This is not supported by the
16 17 18	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12.	
16 17 18 19	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12. 85. In early 2009, Rodriguez observed some	Disputed. This is not supported by the
16 17 18 19 20	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12. 85. In early 2009, Rodriguez observed some quotations written on a dry erase board in the	Disputed. This is not supported by the evidence. When Plaintiffs Rodriguez and
16 17 18 19 20 21	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12. 85. In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were	Disputed. This is not supported by the evidence. When Plaintiffs Rodriguez and Karagiosian viewed the white board, they were informed that the comments were
16 17 18 19 20 21 22	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12. 85. In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness had said during an	Disputed. This is not supported by the evidence. When Plaintiffs Rodriguez and Karagiosian viewed the white board, they were informed that the comments were made in connection with an investigation
16 17 18 19 20 21 22 23	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12. 85. In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness had said during an interview.	Disputed. This is not supported by the evidence. When Plaintiffs Rodriguez and Karagiosian viewed the white board, they were informed that the comments were made in connection with an investigation into a particular case involving Armenians.
16 17 18 19 20 21 22 23 24	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12. 85. In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness had said during an interview. Supporting Evidence: Rodriguez Depo.,	Disputed. This is not supported by the evidence. When Plaintiffs Rodriguez and Karagiosian viewed the white board, they were informed that the comments were made in connection with an investigation
16 17 18 19 20 21 22 23 24 25	meant by this comment. Supporting Evidence: Rodriguez Depo., 314:10-12. 85. In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness had said during an interview. Supporting Evidence: Rodriguez Depo., 202:11-21, 289:13-20, 204:18-205:6, and Exhibit	Disputed. This is not supported by the evidence. When Plaintiffs Rodriguez and Karagiosian viewed the white board, they were informed that the comments were made in connection with an investigation into a particular case involving Armenians.

	1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	2	THOTO MAD BOTT ORTHWO DAIDBAOD	("Karagiosian Depo."), attached to
•	3		Thompson Decl. as Exhibit "E", 48:15-
	4 5		50:12. Both Plaintiff Karagiosian and
	6		Plaintiff Elfego Rodriguez were offended
	7		by the comments, and the explanation
	8		given to them. E. Rodriguez Depo.,
	9		289:13-20; Karagiosian Depo., 48:15-
	10		50:12. Plaintiffs Karagiosian and
	11 12		Rodriguez then complained to Lt.
	13		Dermenjian, who told them that if they
	14		made a complaint about this, it would be
	15		detrimental to their careers and held
	16		against them. Karagiosian Decl., 3:18-4:4;
	17		Karagiosian Depo., 48:15-50:12; E.
	18		Rodriguez Decl., ¶32, 6:26-28.
	19	86. The phrases on the dry erase board were as	Undisputed.
	20	follows:	
	21	"My friend100 percent."	a ·
	22	"I tell you everything100 percent."	5 Tape
	23	"Sir, please, I beg you."	
	. 24	"Swear to God not 100 percent but 1000 percent."	
	25	"Burbank police: Sir, what happened? Tell me.	Ex
	26	What do you know? Well what do you know?."	
	27	Supporting Evidence: Rodriguez Depo.,	
	28	35	

		MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
•	2	FACTS AND SUPPORTING EVIDENCE 294:16-295:15 and Exhibit 146 to Rodriguez Depo.	AND SUPPORTING EVIDENCE
	3	87. Rodriguez considered these phrases to be	Disputed. Mischaracterization of the
	4	referring to Armenians because of the use of the	evidence. Plaintiff Rodriguez also
	.5	phrase "100 percent."	considered the use of the term "my friend,"
	6	Supporting Evidence: Rodriguez Depo.,	especially when paired with "100 percent."
	7.	289:21-290:24.	
	8		E. Rodriguez Depo., 289:21-290:24.
	9	88. Rodriguez considered the use of this phrase	Undisputed.
]	10	"100 percent" disrespectful or demeaning to	
	11	Armenians.	
	12	Supporting Evidence: Rodriguez Depo.,	
	13	290:22-292-11.	
	14	89. Rodriguez has heard Armenians (including	Disputed. Mischaracterization of the
	15	Armenian officers in the BPD) use the words "100	evidence. Plaintiff Rodriguez heard
	16	percent."	Armenians use the words "100 percent,"
	17	Supporting Evidence: Rodriguez Depo.,	however, in a difference context. E.
	18	290:22-292:25.	Rodriguez Depo., 290:22-292:25.
•	19		-
	20	90. Rodriguez's co-plaintiff Steve Karagiosian	Disputed. Mischaracterization of the
	21	(who is Armenian) also observed the quotations	evidence. Plaintiff Rodriguez and Plaintiff
:	22	written on the dry erase board and discussed the	Karagiosian complained to Lieutenant
:	23	quotations with Lieutenant Armen Dermenjian in	Dermenjian. E. Rodriguez Depo., 209:1-
	24	Rodriguez's presence.	
,	25	Supporting Evidence: Rodriguez Depo.,	24; Karagiosian Depo., 209:1-24.
•	26	209:1-24; FAC ¶ 3.	
	 27	91. During that conversation, Rodriguez told	Disputed. Plaintiff Rodriguez stated that
'			1

. 1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	board were "inappropriate." Rodriguez does not	on the white board. E. Rodriguez Depo.,
3	recall saying anything else on the subject. Rodriguez	289:13-20.
4	did not make any other report of the incident because	
5	Karagiosian already had.	
. 6	Supporting Evidence: Rodriguez Depo.,	
7	214:16-23, 215:6-17.	
8	92. Rodriguez testified that the only people he	Undisputed.
9	believed deserved discipline for any harassing,	
10	discriminatory or retaliatory conduct were Kendrick,	
11	Cutler, Frank, and whoever wrote the remarks on the	
12	dry erase board.	
13	Supporting Evidence: Rodriguez Depo.,	
14	282:18-284:11.	
15	93. Rodriguez discussed some of the comments	Undisputed.
16	he heard with his co-plaintiff Omar Rodriguez but he	
17	ceased having any such conversations in early 2008	,
18	because, in his words, "my career had moved on and	
19	I had kind of gotten away from Officer Cutler and	
20	Officer Kendrick, and I was just kind of away on my	
21	own."	
22	Supporting Evidence: Rodriguez Depo.,	£25
23	314:13-315:22, 357:5-19.	
24	94. Rodriguez did not discuss these matters with	Disputed. Misstates the evidence.
25	Omar Rodriguez for the purpose of reporting them.	Plaintiff did not "report" it because he
26	He did not want them reported. Instead, he told	feared that he might be "fired or
27	Omar Rodriguez about the comments because he	
28		disciplined"; rather he was "upset and
	37	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	trusted Omar Rodriguez not to repeat them to anyone	relaying that" to Lt. Omar Rodriguez. See
3	else.	Rodriguez Depo., 314:13-315:24.
4	Supporting Evidence: Rodriguez Depo.,"	
5	376:5-11.	
6		, , ,
7	Issue No. 11: There is no triable issue as to any mater	ial fact and Burbank is entitled to judgment
8	as a matter of law on the Second Cause of Action for h	narassment in violation of the FEHA
9	because Rodriguez's harassment claims are time-barre	d under California Government Code
10	Section 12960(d).	
11	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
12	FACTS AND SUPPORTING EVIDENCE 95. Rodriguez filed his DFEH complaint on May	AND SUPPORTING EVIDENCE Undisputed.
13	27, 2009. FAC ¶ 67, Exhibit G thereto.	
14	96. (Repeat of UF 65, above.) The Department	Disputed. The anonymous letter also
15	received an anonymous letter complaining about	complained about the hostile work
16	racial and ethnic remarks made by unnamed BPD	environment at BPD. See E. Rodriguez
17	officers.	
18	Supporting Evidence: Rodriguez Depo.,	Depo., at 234:16-20.
19	234:16-20; Stehr Decl. ¶ 3, 4:12-15.	
20	97. (Repeat of UF 66, above.) Rodriguez did not	Undisputed.
21	send the anonymous letter, and he does not know	
22	who did.	\
23	Supporting Evidence: Rodriguez Depo.,	
24	235:3-5.	
25	98. (Repeat of UF 67, above.) An outside	Disputed. Plaintiff contests and disputes
26	attorney/investigator, Irma Rodriguez Moisa, was	the "independent" nature of the
27	hired by BPD to conduct an independent	
28		investigation, in that the BPD has refused
	38	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	investigation in to the allegations contained in the	to produce the report authored by Moisa in
3	anonymous letter.	connection with her investigation. See
4	Supporting Evidence: Rodriguez Depo.,	Declaration of India S. Thompson at ¶17,
5	238:1-8; Stehr Decl. ¶ 3, 4:12-15.	3:13-17.
6	00 (D(-CITE (0. 1)))))	
7	99. (Repeat of UF 68, above.) Moisa	Undisputed.
8	interviewed more than a dozen officers in Spring	
9	2008.	
10	Supporting Evidence: Rodriguez Depo.,	
11	345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.	
12	100. (Repeat of UF 69, above.) Rodriguez was	Undisputed.
13	one of the officers interviewed by Moisa.	
14	Supporting Evidence: Rodriguez Depo.,	
15	238:9-10.	
16	101. (Repeat of UF 70, above.) Rodriguez did not	Undisputed.
17	seek out Moisa to make any report or complaint.	
18	Moisa contacted him for an interview.	
19	Supporting Evidence: Rodriguez Depo.,	
20	349:24-350:11.	
21	"Q: But it was not a case of you voluntarily initiating	
22	a contact with her to make a complaint. You responded to a request to be interviewed; correct?	
23	A: Yes."	
24	102. (Repeat of UF 71, above.) When he was	Disputed. Plaintiff Rodriguez specifically
25	interviewed by Moisa, Rodriguez told her that he had	stated that Officer Kendricks said:
26	heard some derogatory comments made about	"Mexican's messed up Burbank." E,
27	Hispanics years before, when he was a probationary	
28	officer, but that since he had become a more	Rodriguez Depo., 240:3-8.
	39	
	PI AINTIFF'S SEPARATE STATEMENT OF D	JODITED EACTS IN ODDOSITION

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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	experienced officer nobody would make a comment	TALE SOLI OKLING ISTRIBUTION
3	like that in his presence.	Not all of the derogatory comments
4	Supporting Evidence	recalled by Plaintiff were made in the first
5	"Q. Other strike that. You do you recall telling Irma Rodriguez that when you were a new officer	year or so of his career; most of the
6	a young officer in the department, still on probation,	
7	or shortly thereafter, that you had heard derogatory remarks, but you couldn't recall exactly what they	comments were, but some were heard
8	were, made about Hispanics?	through the time he complained to Lt.
. 9	A. Yes.	Dermenjian. E. Rodriguez Depo., 201:10-
10	Q. Do you recall telling Irma Rodriguez that since you had become a more experienced officer, that	206:4-8. E. Rodriguez Decl., ¶¶21-22,
11	people knew you had a strong personality and that now nobody would make a statement like that,	5;2-9.
12	negative about Hispanics, in your presence?	J.4-7.
13	A. Something to that effect."	
14	(Rodriguez Depo., 242:6-18.)	
15	***	
16	"Q. Okay. Did any of these remarks get said after you were on probation in your presence?	
. 17	[Objection omitted.]	
18	Q. BY MR. MICHAELS: After the time that you successfully completed your probation.	
19		,
20	A. Most of these comments I heard were earlier in my career, right around that time, my first year don't	
21	know specifically if some bridged that line after after the year mark. But shortly after that I left the	
22	Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."	
23	(Rodriguez Depo., 248:5-16.)	
24	103. (Repeat of UF 72, above.) Rodriguez told	Undisputed.
25	Moisa he heard Hispanics referred to as "paisas"	
26	(Spanish slang for countryman or "paisano"),	
27	"12500's" (reference to the Vehicle Code Section	
28		
	· , ·	

. '		
. 1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	prohibiting driving without a licenses), "those	AND BUTTORTHING EVIDENCE
. 3	people" or "your peeps," and "Mojados."	
4	Rodriguez also told Moisa he had heard comments	
5	about Armenians.	
. 6	Supporting Evidence: Rodriguez Depo.,	
7	241:9-12, 243:5-244:24, 244:25-245:12, 245:18-	
8	246:5, 246:6-246:9.	
9	104. (Repeat of UF 73, above.) Rodriguez began	Undisputed.
10	working for the BPD in 2004.	
11	Supporting Evidence: Rodriguez Depo.,	
12	126:24 – 127:1.	
13	105. (Repeat of UF 74, above.) Rodriguez	Disputed. Plaintiff Rodriguez testified that
14	identified only two individuals who made any of	"numerous officers" made other race-
15	these remarks: Officers Aaron Kendrick and Jared	based remarks, though at that time of his
16	Cutler.	
17	Supporting Evidence: Rodriguez Depo.,	deposition, Plaintiff did not specifically
18	240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-	recall any names other than Officers Cutler
19	12, 406:5-13, 406:14-20.	and Kendrick. See E. Rodriguez Depo.,
20	"Q. Do you recall anyone specifically who made	240:11-19.
21	those remarks?	
22	A. I've heard Kendrick refer to them as 'your peeps' several times.	1:50
23	Q. Anyone else?	pate.
24	A. Cutler.	
25	Q. Anyone else?	
26	A. Not specifically."	
27	Rodriguez Depo., 245:23-246:5.	
28		

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	106. (Repeat of UF 75, above.) Officer Kendrick	Disputed. Statement is not supported by
3	was disciplined as a result of Moisa's investigation	evidence. At page 248, lines 17-23 of
4	and a follow-up internal investigation.	Plaintiff's deposition, Plaintiff indicated
5	Supporting Evidence: Rodriguez Depo.,	that he did not know whether Kendrick
6	248:17-23; Stehr Decl. ¶ 5, 4:21-23.	was disciplined and that there were
7		
8		"rumors both ways." See E. Rodriguez
9		Depo., 248:24-249:12.
-10	107. (Repeat of UF 76, above.) Officer Cutler left	Disputed. Statement is not supported by
11	the Department before any discipline resulting from	evidence. At page 248, lines 17-23 of
12	Moisa's investigation could be considered.	Plaintiff's deposition, Plaintiff indicated
13	Supporting Evidence: Rodriguez Depo.,	that he did not know whether Kendrick
14	248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.	was disciplined and that there were
15		_
16	· .	"rumors both ways." See E. Rodriguez
17		Depo., 248:24-249:12.
18	108. (Repeat of UF 77, above.) Rodriguez's	Disputed. The purported fact is a
19	report to Moisa was accurate and complete.	mischaracterization of the evidence. As
20	Supporting Evidence:	set forth in the adjacent, Plaintiff
21	"Q. So you told the truth, the whole truth, and nothing but the truth to Irma Moisa Rodriguez —	Rodriguez recalled telling the investigator
22	A. As I remember it, yes."	the truth, but the evidence does not support
23	(Rodriguez Depo., 238:11-239:5.)	
24	(Itourigues 2 opon, 250.11 259.5.)	an inference that Plaintiff told the
25		investigator everything that happened to
26:		him. Therefore, the evidence does not
27		support the statement that Plaintiff's report
28		

FACTS AND SUPPORTING EVIDENCE AND SUPPORTING EVIDENCE was "complete." See E. Rodriguez Depo., 238:11-239:5. 109. (Repeat of UF 78, above.) Rodriguez reaffirmed in his deposition testimony what he had told Moisa: that all of the derogatory comments he could recall were made during the first year or so of his career. Supporting Evidence: Q. Okay. Did any of these remarks get said after you were on probation in your presence? MR. GRESEN: Objection. Vague and ambiguous as to "after you were on probation." Q. BY MR. MICHAELS: After the time that you successfully completed your probation. A. Most of these comments I heard were earlier in my career, right around that time, my first year on. I don't know specifically if some bridged that line after after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that." (Rodriguez Depo., 248:5-16.) 110. (Repeat of UF 79, above.) Rodriguez initially testified that his report to Moisa included all of the derogatory terms he could recall hearing about Hispanics. Supporting Evidence: Rodriguez Depo., 246:13-247:10. 111. (Repeat of UF 80, above.) Rodriguez later testified to hearing the additional terms "gardeners," "Julios," "half breed," and "wetback."	1	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
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of the derogatory terms he could recall hearing about Hispanics. Supporting Evidence: Rodriguez Depo., 24	20	110. (Repeat of UF 79, above.) Rodriguez	Repeat of DF 79, above.
Hispanics. Supporting Evidence: Rodriguez Depo., 24	21	initially testified that his report to Moisa included all	
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25 246:13-247:10. 26 111. (Repeat of UF 80, above.) Rodriguez later 27 testified to hearing the additional terms "gardeners," 28 "Julios," "half breed," and "wetback."	23	Hispanics.	
26 111. (Repeat of UF 80, above.) Rodriguez later 27 testified to hearing the additional terms "gardeners," 28 "Julios," "half breed," and "wetback."	24	Supporting Evidence: Rodriguez Depo.,	
testified to hearing the additional terms "gardeners," 28 "Julios," "half breed," and "wetback."	25	246:13-247:10.	
28 "Julios," "half breed," and "wetback."	26	111. (Repeat of UF 80, above.) Rodriguez later	Repeat of DF 80, above
	27	testified to hearing the additional terms "gardeners,"	Fig. 4.29
43	28.	"Julios," "half breed," and "wetback."	
		43	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Rodriguez Depo.,	AND SUFFORTING EVIDENCE
3	420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	
4	429;21.	N°
5	112. (Repeat of UF 81, above.) Rodriguez is	Repeat of DF 81, above.
6	unable to remember who made any of the comment	
7	identified in UF 80, or when these terms were used,	
8	or the context in which they were used.	
9	Supporting Evidence: Rodriguez Depo.,	
10	420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	
11	429:21.	
12	113. (Repeat of UF 82, above.) Sergeant Kelly	Repeat of DF 82, above
13	Frank made the following remark to Rodriguez	
14	during Rodriguez's first year to eighteen months in	
15	the BPD: "You look like the bad guys we chase."	
16	Supporting Evidence: Rodriguez Depo.,	
17	310:13-310:23.	
18	114. (Repeat of UF 83, above.) In making this	Repeat of DF 83, above.
19	comment, Frank was referring to the mid-1960's	
20	Chevrolet Rodriguez drove, which Frank felt looked	
21	like the type of car the Burbank Police Department	114
22	often sees driven by street racers. Frank did not	
23	make this comment for any reason related to	
24	Rodriguez's ethnicity or national origin.	
25	Supporting Evidence: Declaration of Kelly	
26	Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-	
27	20.	
28		

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	115. (Repeat of UF 84, above.) Rodriguez never	Repeat of DF 84, above
3.	asked Frank what he had meant by this comment.	
4	Supporting Evidence: Rodriguez Depo.,	r.
5	314:10-12.	
.6	116. (Repeat of UF 85, above.) In early 2009,	Repeat of DF 85, above
7	Rodriguez observed some quotations written on a	
8	dry erase board in the Detective Bureau, which	
9	Rodriguez was told were taken from what a witness	
10	had said during an interview.	
11	Supporting Evidence: Rodriguez Depo.,	
12	202:11-21, 289:13-20, 204:18-205:6, and Exhibit	
13	146 to Rodriguez Depo.	·
14	117. (Repeat of UF 86, above.) The phrases on	Repeat of DF 86, above.
15	the dry erase board were as follows:	
16	"My friend100 percent."	·
17	"I tell you everything100 percent."	
18	"Sir, please, I beg you."	
19	"Swear to God not 100 percent but 1000 percent."	
20	"Burbank police: Sir, what happened? Tell me.	
.21	What do you know? Well what do you know?."	
22	Supporting Evidence: Rodriguez Depo.,	AT .
23	294:16-295:15 and Exhibit 146 to Rodriguez Depo.	
24	118. (Repeat of UF 87, above.) Rodriguez	Repeat of DF 87, above.
25	considered these phrases to be referring to	
26	Armenians because of the use of the phrase "100	1 gg.
27	percent."	
28		

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Rodriguez Depo.,	
3	289:21-290:24.	(:
4	119. (Repeat of UF 88, above.) Rodriguez	Repeat of DF 88, above
5	considered the use of this phrase "100 percent"	
6	disrespectful or demeaning to Armenians.	,,
.7	Supporting Evidence: Rodriguez Depo.,	
8	290:22-292-11.	
9	120. (Repeat of UF 89, above.) Rodriguez has	Repeat of DF 89, above
10	heard Armenians (including Armenian officers in the	
11	BPD) use the words "100 percent."	
12	Supporting Evidence: Rodriguez Depo.,	•
13	290:22-292:25.	
14	121. (Repeat of UF 90, above.) Rodriguez's co-	Repeat of DF 90, above
15	plaintiff Steve Karagiosian (who is Armenian) also	
16 .	observed the quotations written on the dry erase	
17	board and discussed the quotations with Lieutenant	
18	Armen Dermenjian in Rodriguez's presence.	
19	Supporting Evidence: Rodriguez Depo.,	
20	209:1-24; FAC ¶ 3.	
21	122. (Repeat of UF 91, above.) During that	Repeat of DF 91, above.
22	conversation, Rodriguez told Dermenjian that he arso	
23	felt the comments on the board were "inappropriate."	
24	Rodriguez does not recall saying anything else on	
25	the subject. Rodriguez did not make any other report	
26	of the incident because Karagiosian already had.	
27	Supporting Evidence: Rodriguez Depo.,	
28		<u> </u>
	.46	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	214:16-23, 215:6-17.	AND SUFFORTING EVIDENCE
3 ,6	123. (Repeat of UF 92, above.) Rodriguez	Repeat of DF 92, above.
4	testified that the only people he believed deserved	
5	discipline for any harassing, discriminatory or	
6	retaliatory conduct were Kendrick, Cutler, Frank,	
7 ·	and whoever wrote the remarks on the dry erase	
8	board.	
9	Supporting Evidence: Rodriguez Depo.,	
10	282:18-284:11.	
11	124. (Repeat of UF 93, above.) Rodriguez	Repeat of DF 93, above.
12	discussed some of the comments he heard with his	
13	co-plaintiff Omar Rodriguez but he ceased having	
14	any such conversations in early 2008 because, in his	
15	words, "my career had moved on and I had kind of	
16	gotten away from Officer Cutler and Officer	
17	Kendrick, and I was just kind of away on my own."	
18	Supporting Evidence: Rodriguez Depo.,	
19	314:13-315:22, 357:5-19.	
20	125. (Repeat of UF 94, above.) Rodriguez did not	Repeat of DF 94, above.
21	discuss these matters with Omar Rodriguez for the	
22	purpose of reporting them. He did not want them	: %
23	reported. Instead, he told Omar Rodriguez about the	
24	comments because he trusted Omar Rodriguez not to	
25	repeat them to anyone else.	
26	Supporting Evidence: Rodriguez Depo.,	1.4.2
27	376:5-11.	
28		

THIRD CAUSE OF ACTION

(Retaliation under the FEHA)

as a matter of law for the following reason: As a matter of law, the transfer from SED to Patrol is

not an actionable "adverse employment action," which is a necessary element of the prima facie.

Issue No. 12: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of

Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment

case for retaliation.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE
126. (Repeat of UF 1, above.) The SED was a	AND SUPPORTING EVIDENCE Repeat of DF 1, above.
unit that assisted BPD detectives.	
unit that assisted BPD detectives.	
Supporting Evidence: Rodriguez Depo.,	
26:22-27:17.	
127. (Repeat of UF 2, above.) Rodriguez was	Repeat of DF 2, above.
assigned to SED from October 2008 until May 2009.	
Supporting Evidence: Rodriguez Depo.,	
28:15-20; Lowers Decl., ¶ 4, 1:15.	
128. (Repeat of UF 3, above.) In May 2009, the	Repeat of DF 3, above.
SED unit was disbanded, and Rodriguez was	₽ _d
transferred to a Patrol assignment.	
Supporting Evidence: Rodriguez Depo.,	
26:15-21, 43:19-20; FAC ¶ 66.	
129. (Repeat of UF 4, above.) The SED	Repeat of DF 4, above.
assignment did not involve any additional	

* * *		
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	compensation.	THE BOTT ORTHOD VIDENCES
3	Supporting Evidence: Rodriguez Depo., 16:	
4	4-15; Declaration of Trisha Welsh ("Welsh Decl."),	. 7
5	¶¶ 3-5, 13:10-22; Declaration of Tim Stehr ("Stehr	
6	Decl."), ¶ 6, 4:25-:5:2.	
7	Note regarding supporting evidence: Rodriguez	
8	testified that the base rate of pay in these two	
9	assignments was the same, but asserted that more	
10	overtime work was available in the SED assignment.	
11 .	However, his payroll and timecard records show that	
12	Rodriguez actually worked more overtime and was	
13	paid more after he transferred back to a Patrol	
14	assignment. The payroll records show that during	
15	the portion of 2009 that Rodriguez was assigned to	,
16	SED, his average weekly overtime hours were 9.75	
17	and his average weekly pay was \$2,546.43. After he	
18	was transferred to a Patrol assignment in May 2009,	
19	Rodriguez's average weekly overtime hours for the	
20 .	remainder of 2009 were 11.63 and his average	
21	weekly pay was \$2,574.81.	3rdin
22	130. (Repeat of UF 5, above.) The SED	Repeat of DF 5, above ** From hereonin,
23	assignment did not involve any change in rank.	for all of Defendant's Repeat of their UF
24	Supporting Evidence: Stehr Decl. ¶ 6, 4:25-	statement, Plaintiff incorporates its
25	5:2.	responses to each herein.
. 26	la a la companya di managana d	
27	Issue No. 13: The Third Cause of Action for retaliation	on under the FEHA, as set forth in the FAC,

Issue No. 13: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of

•			
1	Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said		
2	cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment		
3	as a matter of law for the following reason: Because SED was disbanded, Rodriguez cannot		
4	establish that there was a job available for him in SED, which is a necessary element of the prima		
5	facie case for retaliation.		
6			
7	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE	
8	131. (Repeat of UF 2, above.) Rodriguez was	AND SUPPORTING EVIDENCE	
9.	assigned to SED from October 2008 until May 2009.		
10	Supporting Evidence: Rodriguez Depo.,		
.11	28:15-17; Lowers Decl. ¶ 4, 1:15		
12	132. (Repeat of UF 3, above.) In May 2009, the		
13	SED unit was disbanded, and Rodriguez was		
14	transferred to a Patrol assignment.		
15	Supporting Evidence: Rodriguez Depo.,		
16	26:15-21; 43:19-20; FAC ¶ 66.		
17	133. (Repeat of UF 8, above.) Sergeant Travis		
18	Irving and Officer Steve Karagiosian were also		
19	transferred back to Patrol assignments.		
20	Supporting Evidence: Rodriguez Depo.,		
21	43:11-44:6; Karagiosian Depo., 19:4-22, 31:7-10.		
22	ję		
23	Issue No. 14: The Third Cause of Action for retaliation	n under the FEHA, as set forth in the FAC,	
24	includes and subsumes what is actually a separate caus	e of action based on Burbank's transfer of	
25	Rodriguez from an SED assignment to a Patrol assignment	nent when SED was disbanded. On said	
26	cause of action, there is no triable issue as to any mater	ial fact and Burbank is entitled to judgment	
27	as a matter of law for the following reason: Rodriguez	was assigned to SED by the same person	
~~			

	1	who recommended SED be disbanded, and the legal do	octrine of "same actor presumption"
	2	precludes Rodriguez from establishing a prima facie ca	
	-	precides Rounguez from establishing a prima facie ca	ise for discrimination.
	. 3		
•	4	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	5	134. (Repeat of UF 9, above.) Rodriguez was	THE SOLVE CHARACTER STATE OF THE STATE OF TH
	6	selected for the SED assignment by the Captain over	
	7	the SED unit, Janice Lowers.	
	8	Supporting Evidence: Rodriguez Depo.,	
	9	28:15-17; Lowers Decl. ¶ 4, 1:15.	
	10	135. (Repeat of UF 10, above.) The decision to	
	11	disband the SED unit was made based on the	
	12	recommendation of Captain Lowers.	
	13	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10;	
	14	Lowers Decl. ¶ 5, 1:17-22.	
	15		
	15 16	Issue No. 15: The Third Cause of Action for retaliatio	n under the FEHA, as set forth in the FAC,
	16	Issue No. 15: The Third Cause of Action for retaliatio includes and subsumes what is actually a separate caus Rodriguez from an SED assignment to a Patrol assign	se of action based on Burbank's transfer of
	16 17	includes and subsumes what is actually a separate caus	se of action based on Burbank's transfer of ment when SED was disbanded. On said
	16 17 18	includes and subsumes what is actually a separate caus Rodriguez from an SED assignment to a Patrol assignment	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment
	16 17 18 19	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment cause of action, there is no triable issue as to any mater	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, non-
	16 17 18 19 20	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment cause of action, there is no triable issue as to any mater as a matter of law for the following reason: Burbank h	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, non-
	16 17 18 19 20 21	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment cause of action, there is no triable issue as to any mater as a matter of law for the following reason: Burbank I discriminatory and non-retaliatory reason for the trans-	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, non- fer, and Rodriguez cannot show that the
	16 17 18 19 20 21 22	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment cause of action, there is no triable issue as to any mater as a matter of law for the following reason: Burbank I discriminatory and non-retaliatory reason for the transferason was pretextual.	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, non-fer, and Rodriguez cannot show that the
	16 17 18 19 20 21 22 23	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment of a Patrol assignment of action, there is no triable issue as to any mater as a matter of law for the following reason: Burbank I discriminatory and non-retaliatory reason for the transferacion was pretextual. MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, non- fer, and Rodriguez cannot show that the
	16 17 18 19 20 21 22 23 24 25	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment cause of action, there is no triable issue as to any mater as a matter of law for the following reason: Burbank I discriminatory and non-retaliatory reason for the transferason was pretextual. MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE 136. (Repeat of UF 3, above.) In May 2009, the	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, non-fer, and Rodriguez cannot show that the De OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	16 17 18 19 20 21 22 23 24 25 26	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment cause of action, there is no triable issue as to any mater as a matter of law for the following reason: Burbank I discriminatory and non-retaliatory reason for the transferason was pretextual. MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE 136. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, nonfer, and Rodriguez cannot show that the
	16 17 18 19 20 21 22 23 24 25	includes and subsumes what is actually a separate cause Rodriguez from an SED assignment to a Patrol assignment cause of action, there is no triable issue as to any mater as a matter of law for the following reason: Burbank I discriminatory and non-retaliatory reason for the transferason was pretextual. MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE 136. (Repeat of UF 3, above.) In May 2009, the	se of action based on Burbank's transfer of ment when SED was disbanded. On said rial fact and Burbank is entitled to judgment has proffered a legitimate, non-fer, and Rodriguez cannot show that the De OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE

1	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
2	FACTS AND SUPPORTING EVIDENCE Supporting Evidence: Rodriguez Depo.,	AND SUPPORTING EVIDENCE
3	26:15-21; 43:19-20; FAC ¶ 66.	
4	137. (Repeat of UF 12, above.) The SED unit was	€ ;e
5	already in existence when Chief of Police Stehr	
6	assumed the position of Police Chief; he did not	
7	create the unit.	
8	Supporting Evidence: Stehr Decl. ¶ 8(b),	
9	5:22-6:3.	
10	138. (Repeat of UF 10, above.) The decision to	
11	disband the SED unit was made based on the	
12	recommendation of Captain Lowers.	
13	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10;	
14	Lowers Decl. ¶ 5, 1:17-22.	
15	139. (Repeat of UF 14, above.) Lowers'	
16	recommendation was accepted by Chief Stehr, who	
17	agreed with Lowers that disbanding the unit was the	
18	best way to meet the BPD's needs.	
19	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10.	
20	140. (Repeat of UF 15, above.) At the time the	
21	decision to disband SED was made, the Department	1
22	was facing budgetary constraints which left it	'ਜ਼:: ਹ e
23	understaffed. These constraints had kept the	
24.	Department from fully staffing SED, and left it with	
25	openings in its Patrol Division as well.	
26	Supporting Evidence: Stehr Decl. ¶ 8(a),	- 1.44°
07	5:12-20; Lowers Decl. ¶ 5, 1:17-22.	
27	3.12-20, Lowers Dect.	·

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
141. (Repeat of UF 16, above.) Captain Lowers	71110 BOLLOKIII (G DVIDDI)
believed, and Chief Stehr agreed, that it was more	
important to address the needs of the Patrol Division	
than to provide additional assistance to the	
detectives, because the Patrol officers are the front-	
line officers who respond to calls for assistance and	
provide police presence "on the street."	
Supporting Evidence: Stehr Decl. ¶8(a),	
5:12-20; Lowers Decl. ¶ 5, 1:17-22.	
142. (Repeat of UF 17, above.) At the time the	
SED unit was disbanded it was staffed by a Sergeant	·
and two police officers. The two officers were	
Rodriguez and Steve Karagiosian. The two other	
positions in SED were vacant.	
Supporting Evidence: Rodriguez Depo.,	
28:24-29:13.	
143. (Repeat of UF 18, above.) Because the SED	
unit could not be fully staffed (due to the budgetary	
constraints), Chief Stehr did not believe the unit	
could function effectively.	
Supporting Evidence: Stehr Decl. ¶8(a),	1 177
5:12-20.	
144. (Repeat of UF 19, above.) Chief Stehr did	
not believe that a unit that focused on assisting	
detectives was the best way to use BPD resources.	1. 250
Supporting Evidence: Stehr Decl. ¶ 8(b),	
	1

••	1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	2	5:22-6:3.	AND SOFT ORTING EVIDENCE
	3	145. (Repeat of UF 20, above.) Chief Stehr	
	4	envisioned a unit of uniformed officers (SED	
	5	officers were plainclothes) within Patrol that would	
	, 6	assist the Department with special problems in all	
	7	areas. Chief Stehr announced his intention to create	
	8	such a Special Problems Unit at the time he	
	9	disbanded SED, but the unit has never been created	
	10	or staffed due to budgetary constraints.	
	11	Supporting Evidence: Stehr Decl. ¶ 8(b),	
	12	5:22-6:3.	
	13	146. (Repeat of UF 21, above.) In January 2009,	
	14	Chief Stehr had removed the Sergeant over SED,	
	15	Neil Gunn, due to concerns about the number of use	
	16	of force incidents in which Gunn had been involved.	
	17	Supporting Evidence: Stehr Decl. ¶ 8(c), 6:5-	
	18	8.	
	19	147. (Repeat of UF 22, above.) Captain Lowers	
	20	had counseled Gunn that, as a supervisor, he should	
-	21	try to avoid becoming personally involved in use of	
	22	force situations. **	
	23	Supporting Evidence: Lowers Decl. ¶ 6,	
	24	1:24-27.	
	25.	148. (Repeat of UF 23, above.) The Chief and the	
	26 _{ts}	Captain concluded that Gunn was not following	4
	27	Captain Lowers' instructions in this regard.	
	28		
		EA	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Stehr Decl. ¶ 8(d),	AND BOFFORTING EVIDENCE
3	6:10-19; Lowers Decl. ¶ 6, 1:24-27.	
4	149. (Repeat of UF 34, above.) Gunn was	
5	replaced as Sergeant over SED by Sergeant Travis	
6	Irving in January 2009.	
7	Supporting Evidence: Rodriguez Depo.,	
8	30:5-8; Stehr Decl. ¶ 8(c), 6:5-8.	
9	150. (Repeat of UF 25, above.) Irving was also	
10	assigned to supervisory duties at the Burbank animal	
11	shelter and could not devote his full time to	
12	supervising SED.	
13	Supporting Evidence: Stehr Decl. ¶ 8(c), 6:5-	·
14	8.	
15	151. (Repeat of UF 26, above.) Chief Stehr was	
16	concerned about the fact that SED had been	
17	supervised by a Sergeant, specifically Sergeant	
18	Gunn, whose record on use of force might be subject	
19	to scrutiny.	
20	Supporting Evidence: Stehr Decl. ¶ 8(d),	
21	6:10-19.	*
22	152. (Repeat of UF 27, above.) At the time the	
23	Chief disbanded the SED unit, he had recently	
24	learned of allegations that Lieutenant Omar	
25	Rodriguez had used unauthorized force in	
26	interrogating a witness and had intimidated another	
27	police officer into lying to cover-up his misconduct.	
28		
	II	

1	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
.	FACTS AND SUPPORTING EVIDENCE	AND SUPPORTING EVIDENCE
2	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
3	7:3.	
4	153. (Repeat of UF 28, above.) After learning	
5	about the allegations, Chief Stehr referred the matter	
6	to the Los Angeles County Sheriff's Department for	
7	investigation. Chief Stehr had also recently learned	
8	that the Federal Bureau of Investigation was	
9	conducting its own investigation of use of force by	
10	BPD officers.	
11	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
12	7:3.	
13	154. (Repeat of UF 29, above.) Chief Stehr was	
14	concerned that officers assigned to the SED unit	
15	could come under increased scrutiny based on the	·
16	history of Sergeant Gunn. Supporting Evidence:	
17	Stehr Decl. ¶ 9, 6:21-7:3.	·
18	155. (Repeat of UF 30, above.) Chief Stehr's	
19	concern that officers assigned to the SED unit could	
20	come under increased scrutiny had nothing to do	· · · · ·
21	with any improper use of force by Officer Elfego	k
22	Rodriguez himself.	
23	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
24	7:3; Rodriguez Depo., 96:22-97:1 (Rodriguez	
25	testified that he heard rumors that SED had	
26	developed a reputation as having "dirty cops" who	Embrach Stoke
27	"beat suspects," but that the rumors related to	
28		
	56	

1	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
2	FACTS AND SUPPORTING EVIDENCE conduct that occurred before he was in SED).	AND SUPPORTING EVIDENCE
3	156. (Repeat of UF 31, above.) (Repeat of UF 15,	
4	above.) Rodriguez had not been in the SED when	
5	the events giving rise to Chief Stehr's concerns	
6	about Sergeant Gunn had taken place.	
7	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
8 .	7:3.	
9	157. (Repeat of UF 32, above.) UF 15 through 31,	
10	above, set out the reasons why Chief Stehr accepted	
11	Captain Lowers' recommendation to disband SED.	
12	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-	
13	6:19.	
14	Evidence that Rodriguez himself cannot dispute	
15	these reasons is his testimony that:	
16	(1) He has no basis for thinking that Chief Stehr had	
17	any dislike for Hispanic or Guatemalan people	
18	(Rodriguez Depo., 384:11-16);	
19	(2) His response in deposition, when asked whether	
20	he believed that the closure of SED had anything to	
21	do with his ethnicity or national origin: "Not	· · · · · · · · · · · · · · · · · · ·
22	necessarily, per se."	sit · · ·
23	"Q Do you believe that the fact that I'm sorry. Do you believe that your ethnicity or national origin	
24	played any role in the decision to close SED?	
25	[Objection omitted.]	
26	THE WITNESS: Not necessarily, per se."	To take the second of
27	Rodriguez Depo., 443:16-21.	
28	(3) His testimony that his belief that he was	
	'	

,		
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	retaliated against was just a "feeling" on his part.	
3	(Rodriguez Depo., 349:5-19); and	
4	(4) His testimony that his belief that the closure of	
5	SED was intended to hurt him was speculation on his	
6	part:	
7	"Q. The chief made the decision to close SED; correct?	
. 8		
9	[Objection omitted.]	
10	THE WITNESS: Yes.	
11	Q. BY MR. MICHAELS: And in making that decision, he intended to hurt you and Officer	
12	Karagiosian, but not the sergeant in charge of that division, Sergeant Irving. That's your opinion;	
13	correct?	
14	[Objection omitted.]	·
15	THE WITNESS: Yes.	
16	Q. BY MR. MICHAELS: And that is speculation on your part; correct?	
17	A. Yes."	
18	Rodriguez Depo., 46:21-47:10.	
19		
20	Issue No. 16: The Third Cause of Action for retaliation	on under the FEHA, as set forth in the FAC,
21	includes and subsumes what is actually a separate cau	se of action based on Burbank's decision not
22	to select Rodriguez first for a position on the SWAT	Team. On said cause of action, there is no
23	triable issue as to any material fact and Burbank is en	titled to judgment as a matter of law for the

triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's decision not to choose Rodriguez first for the SWAT Team position is not an actionable "adverse employment action," which is a necessary element of the prima facie case for retaliation.

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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	158. (Repeat of UF 33, above.) Rodriguez was	1412 5511 5111 15 15 15 15 15 15 15 15 15 15
3	assigned to the SWAT Team in February or March	
4	2009.	
5	Supporting Evidence: Rodriguez Depo.,	
6	143:19-23.	
7	159. (Repeat of UF 34, above.) Rodriguez	,
8	voluntarily left his SWAT Team assignment in late	
9	2009 in order to accept an assignment on the U.S.	
10	Marshall's Task Force.	
11	Supporting Evidence: Rodriguez Depo.,	
12	449:11-23.	
13	160. (Repeat of UF 35, above.) The SWAT Team	
14	trains one day a month.	
15	Supporting Evidence: Rodriguez Depo.,	
16	137:15-19.	
17	161. (Repeat of UF 36, above.) During the time	·
18	Rodriguez was on the SWAT Team, he was never	
19	actually called out on an assignment. Rodriguez is	
20	aware of only one occasion where the SWAT Team	
21	was called out during the time he was on the SWAT	
22	Team. He missed that assignment because he was	
23	out of range to receive the call out on his cell phone.	
24	Supporting Evidence: Rodriguez Depo.,	
25	143:16-17, 159:25-160:23; Lynch Decl., ¶ 3, 8:11-	
26	15. " " " " " " " " " " " " " " " " " " "	
27	162. (Repeat of UF 37, above.) Members of the	
28		· · · · · · · · · · · · · · · · · · ·
	59	YORLINGS PLACED BY ORDOGENOV
	PLAINTIFF'S SEPARATE STATEMENT OF D	NOTUTED FACTS IN OPPOSITION

. 1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	SWAT Team receive no extra compensation for the	AND SUPPORTING EVIDENCE
3	assignment.	
4	Supporting Evidence: Lynch Decl. ¶ 4, 8:17-	v. pr
5	20.	
6	163. (Repeat of UF 38, above.) Members of the	
7	SWAT Team receive no change in rank.	
8	Supporting Evidence: Lynch Decl. ¶ 4, 8:17-	
9.	20.	
10		
11	Issue No. 17: The Third Cause of Action for retaliation	on under the FEHA, as set forth in the FAC,
12	includes and subsumes what is actually a separate caus	se of action based on Burbank's decision not
13	to select Rodriguez first for a position on the SWAT T	eam. On said cause of action, there is no
14	triable issue as to any material fact and Burbank is ent	itled to judgment as a matter of law for the
15	following reason: Burbank has proffered a legitimate,	non-discriminatory and non-retaliatory
16	reason for its decision not to choose Rodriguez first fo	or the SWAT Team position, and Rodriguez
17	cannot show that the reason was pretextual.	
18		
19	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
20	164. (Repeat of UF 39, above.) The SWAT Team	
21	is a unit which responds to specific types of	40
22	emergencies, such as hostage situations and serving	
23	high risk search or arrest warrants.	
24	Supporting Evidence: Lynch Decl. ¶ 3, 8:11-	
25	15.	82
26	165. (Repeat of UF 40, above.) Officers wishing	,
27	to serve on the SWAT Team must have at least two	
28		

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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

1.	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	years of service on the BPD and must pass a	
3	shooting range test and a physical agility/obstacle	
4	course test.	10
5	Supporting Evidence: Rodriguez Depo.,	
6.	112:21-25, 113:9-25; Lynch Decl. ¶ 4, 8:17-20.	
7	166. (Repeat of UF 41, above.) Three other	
8	officers were selected for the SWAT assignment	
9	ahead of Rodriguez: Jeff Barcus, Adam Cornils and	
10	Steve Turner.	
11	Supporting Evidence: Rodriguez Depo.,	
12	128:21-129:10.	
13	167. (Repeat of UF 42, above.) Officer Barcus	
14	had worked as a Deputy County Sheriff before	
15	joining the BPD, and had worked on the Sheriff	
16	Department's Emergency Response Team.	
17	Supporting Evidence: Lynch Decl. ¶ 5(a),	
18	8:27-9:4. Evidence that Rodriguez himself cannot	
19	dispute this fact is his testimony that he has no	·
20	information about the qualifications of Officer	
21	Barcus to be on the SWAT Team. Rodriguez Depo.,) tau
22	144:18-20.	ं र्व
23	168. (Repeat of UF 43, above.) Officer Cornils	
24	had previously worked for the Monrovia Police	
25	Department, and spent four years as a member of	
26	their SWAT-type team and of a multi-jurisdictional	Take with the second of the se
27	SWAT-type team serving Monrovia and adjacent	
28		
:	61	ACRUMENTO DA CITO DA CARROLLA DE CARROLLA
•	PLAINTIFF'S SEPARATE STATEMENT OF D	ISPUTED FACTS IN OPPOSITION

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	jurisdictions.	
3	Supporting Evidence: Lynch Decl. ¶ 5(b),	
4	9:6-10. Evidence that Rodriguez himself cannot	
5	dispute this fact is his testimony that he has no	
6	information about the qualifications of Officer	
7	Cornils to be on the SWAT Team. Rodriguez Depo.,	
8	144:21-23.	
, 9 .	169. (Repeat of UF 44, above.) Officer Turner	
10	was a former Marine Corps infantryman, fire team	
11	leader, and qualified expert marksman, and was	
12	trained in close quarters combat tactics.	
13	Supporting Evidence: Lynch Decl. ¶ 5(c),	
14	9:12-14. Evidence that Rodriguez himself cannot	
15	dispute this fact is his testimony that he has no	·
16	information about the qualification of Officer Turner	
17	to be on the SWAT Team. Rodriguez Depo.,	
18	144:24-145:1.	
19	170. (Repeat of UF 45, above.) Rodriguez did not	<u> </u>
20	have the same training and experience as Barcus,	
21	Cornils or Turner.	1
22	Supporting Evidence: Lynch Decl. ¶ 6, 9:16-	Ñ.
23	17.	
24	171. (Repeat of UF 46, above.) The decision to	
25	select Officers Barcus, Cornils, and Turner for the	
26	SWAT Team before Rodriguez was made by	Francisco (Constitution of the Constitution of
27	Captain Pat Lynch.	
28	·	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Lynch Decl. ¶ 7, 9:19-	
3	25.	
4	172. (Repeat of UF 47, above.) Captain Lynch's	
5	decision to select Officers Barcus, Cornils, and	
6	Turner for the SWAT Team before Rodriguez was	
7	based on the qualifications of these officers,	
8	including the fact that each of Officers Barcus,	
9	Cornils and Turner had past experience and special	
10	training which made them particularly well-qualified	
11	for SWAT Team duties, and the fact that Barcus,	
12	Cornils, and Turner performed better than Rodriguez	
13	on the shooting range test and/or the physical	
14	agility/obstacle course test.	
15	Supporting Evidence: Lynch Decl. ¶ 5, 8:22-	
16	9:14 and ¶ 7, 9:19-25	
17	Evidence that Rodriguez himself cannot dispute this	
18 .	fact is his testimony that he has no information about	
19	the qualifications of the officers who were selected	
20	for the SWAT Team, or why those officers were	
21	selected:	i i i i i i i i i i i i i i i i i i i
,,22	"Q. BY MR. MICHAELS: What do you know	in.
23	about the qualifications of Officer Barcus to be on the SWAT team?	
24	A. Nothing.	
25 26	Q. What do you know about the qualifications of Officer Cornils to be on the SWAT team?	
. 20 . 27	A. Nothing.	1. (1. (1. (1. (1. (1. (1. (1. (1. (1. (
28	Q. What do you know about the qualifications of Officer Turner to be on the SWAT team?	
	62	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2 3	A. Nothing."	AND SUFFORTING EVIDENCE
4	(Rodriguez Depo., 144:18-145:1)	\$ >
5	"BY MR. MICHAELS: What factors were the deciding factors in selecting Officer Barcus over the	
7	other officers on the list when he was selected?	
8	[Objection omitted.]	
9	THE WITNESS: I don't know.	
10	Q. BY MR. MICHAELS: Same question for Officer Cornils.	
. 11	[Objection omitted.]	
12	THE WITNESS: I don't know.	
13 14	Q. BY MR. MICHAELS: Same question for Officer Turner.	
15	[Objection omitted.]	
16	THE WITNESS: I don't know."	•
17	(Rodriguez Depo., 147:7-22.)	
.18	Rodriguez also testified that his belief that he was	
19	retaliated against was just a "feeling" on his part.	
20	Rodriguez Depo., 349:5-19.	t,
21	173. (Repeat of UF 48, above.) When Rodriguez	
22	was selected for the SWAT Team, he was selected	
23	ahead of other applicants who were white.	
. 24	Supporting Evidence: Lynch Decl. ¶ 8, 10:1-	
25 26	2.	
27		
28		
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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

. 1	Issue No. 18: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC,	
2	includes and subsumes what is actually a separate cause of action based on Burbank's decision not	
3	to select Rodriguez for a temporary training assignment. On said cause of action, there is no	
4	triable issue as to any material fact and Burbank is enti-	lled to judgment as a matter of law for the
5	following reason: As a matter of law, Burbank's decision	on not to select Rodriguez for the
6	temporary training assignment is not an actionable "ad	verse employment action," which is a
7	necessary element of the prima facie case for retaliation	1.
8		
9	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
10	174. (Repeat of UF 49, above.) Rodriguez was	AND SUFFORTING EVIDENCE
11	not chosen to fill in as a temporary training officer	
12	for a one-week period while the regular training	
13	officer was on vacation during the period from June	
14	27 through July 4, 2009.	
15	Supporting Evidence: Rodriguez Depo.,	
16	19:13-20:5; Rosoff Decl., ¶ 3, 11:7-13.	
17	175. (Repeat of UF 50, above.) The temporary	
18	training assignment (which lasted for one week) did	
19	not involve any additional compensation.	
20	Supporting Evidence: Rodriguez Depo.,	
<u>2</u> 1	21:5-15.	
22	176. (Repeat of UF 51, above.) The temporary	
23	training assignment (which lasted for one week) did	
24	not involve any change in rank.	
25	Supporting Evidence: Stehr Decl. ¶ 7, 5:4-5.	
26	177. (Repeat of UF 52, above.) Rodriguez had	
27	served as a Field Training Officer from January 2007	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	until to October 2008.	TAXAD BOTT ONTINO DATABLE COL
3	Supporting Evidence: FAC ¶ 60; Stehr Decl.	
47	¶ 6, 4:25-5:2.	
5	$\langle \chi \rangle$	
6	Issue No. 19: The Third Cause of Action for retaliation	n under the FEHA, as set forth in the FAC,
7	includes and subsumes what is actually a separate caus	e of action based on Burbank's decision not
8	to select Rodriguez for a temporary training assignmen	nt. On said cause of action, there is no
9	triable issue as to any material fact and Burbank is enti	tled to judgment as a matter of law for the
10	following reason: Burbank has proffered a legitimate,	non-discriminatory and non-retaliatory
11	reason for its decision not to select Rodriguez for the to	emporary training assignment, and
12	Rodriguez cannot show that the reason was pretextual.	•
13		
14	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
15	FACTS AND SUPPORTING EVIDENCE 178. (Repeat of UF 49, above.) Rodriguez was	AND SUPPORTING EVIDENCE
1.6	not chosen to fill in as a temporary training officer	
17	for a one-week period while the regular training	
18	officer was on vacation during the period from June	
19	27 through July 4, 2009.	
20	Supporting Evidence: Rodriguez Depo.,	
21	19:13-20:5; Rosoff Decl. ¶ 3, 11:7-13.	
22	179. (Repeat of UF 54, above.) The officers	
23	assigned to fill in as temporary training officers	
24	during this week were Officers Krueger and	
25	Edwards.	
26	Supporting Evidence: Rodriguez Depo.,	
27	23:1-13; Rosoff Decl. ¶ 3, 11:7-13.	
28		
	•	

. 1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	180. (Repeat of UF 55, above.) Officers Kruger	AND SUFFURTING EVIDENCE
3	and Edwards were selected by the Watch	
4	Commander, Lieutenant Eric Rosoff, based on the	
5	fact that they were good officers who had been	
6	working continuously in Patrol for at least a year and	
7	who had expressed an interest in becoming regular	,
8	Field Training Officers; Rosoff wanted to assist them	
9	in their career development by giving them an	
10	opportunity to act as Field Training Officers.	
11	Supporting Evidence: Rosoff Decl. ¶ 4, 8:12-	
12	16.	
13	181. (Repeat of UF 52, above.) Rodriguez had	
14	served as a Field Training Officer from January 2007	
15	until October 2008.	
16	Supporting Evidence: FAC ¶ 60; Stehr Decl.	
17	¶ 6, 4:25-5:2.	·
18		
19	Issue No. 20: Burbank is entitled to summary adjudic	ation as to the entire Third Cause of Action
20	for retaliation in violation of the FEHA, as set forth in	the FAC, because Burbank is entitled to
21	summary adjudication as to each of the claims include	d and subsumed therein, for the reasons
22	stated in Issues 12 through 19, infra.	
23		· Zr
24	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
25	FACTS AND SUPPORTING EVIDENCE 182. (Repeat of UF 57, above.) Rodriguez	AND SUPPORTING EVIDENCE
26	identifies the three decisions described above (that	
27	is, his transfer from an SED assignment to an	
28		

		n = n + 1
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	assignment in Patrol, the fact that he was not the first	AND BOTT ORTHNO EVIDENCE
3	officer selected for a position on the SWAT Team,	
4	and Burbank's failure to choose him for a temporary	
5	assignment training another officer) as the only three	
6	reasons he was dissatisfied with his employment.	
7	Supporting Evidence: Rodriguez Depo.,	
8	26:1-14.	
9	183. (Repeat of UF 58, above.) Rodriguez is	
10	currently employed by the BPD.	
11	Supporting Evidence: Lowers Decl. ¶ 3,	
12	1:12-13.	
13	184. (Repeat of UF 59 above.) Rodriguez has not	
14	been disciplined during his employment with the	
15	BPD.	
16	Supporting Evidence: Rodriguez Depo.,	
17	442:22-23.	
18	185. (Repeat of UF 60, above.) Rodriguez has not	
19	been denied a promotion during his employment	
20	with the BPD.	
21	Supporting Evidence: Rodriguez Depo.,	
22	17:15-20.	
23	186. (Repeat of UF 61, above.) Each of the	. 31
24	performance evaluations Rodriguez has been given	
25	during his employment with the BPD reflected the	
26	fact that he had been performing his job in an above-	
27	satisfactory or better manner.	
28		

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Rodriguez Depo., 333:	AND BUILD RING EVIDENCE
3	18-25.	
4	187. (Repeat of UF 62, above.) Rodriguez sought	4.
5	four special assignments and got all of them: Field	
6	Training Officer, Special Enforcement Detail,	
7	Special Response (or SWAT) Team, and U.S.	
8	Marshall's Task Force.	
9	Supporting Evidence: Rodriguez Depo.,	
10	18:24-19:2, 25:4-16, 28:15-17, 143:16-23, and	
11,	449:9-20.	
12	188. (Repeat of UF 63, above.) Rodriguez does	
13	not know of any white officer in the BPD who has a	
14	better track record than Rodriguez himself in getting	
15	every assignment and duty they requested.	
16	Supporting Evidence: Rodriguez Depo.,	
17	472:13-18.	
18	189. Burbank incorporates by reference	Plaintiff incorporates his responses to
19	Undisputed Material Fact Nos. 126 through 181	Facts Nos. 126 through 181 herein.
20	above.	
21		1 100
22	FIFTH CAUSE OF	ACTION
23	(Failure to Prevent Harassment, Discrimination	on, and Retaliation under the FEHA)
24		
25	Issue No. 21: The Fifth Cause of Action for failure to	prevent harassment, discrimination and
26	retaliation under the FEHA, as set forth in the FAC, in	cludes and subsumes what is actually a
27	separate cause of action based on Burbank's transfer of	of Rodriguez from an SED assignment to a
28	Patrol assignment when SED was disbanded. On said	cause of action, there is no triable issue as
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	PLAINTIFF'S SEPARATE STATEMENT OF D	ISPUTED FACTS IN OPPOSITION

1	to any material fact and Burbank is entitled to judgmen	at as a matter of law for the following
2	reason: As a matter of law, the transfer from SED to P	atrol is not an actionable "adverse
3	employment action," which is a necessary element of t	he prima facie case for discrimination and
4	retaliation.	
5		
6	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
7	190. (Repeat of UF 1, above.) The SED was a	PRIND BOTT ORTHVO BY IDDINOL
8	unit that assisted BPD detectives.	
9	Supporting Evidence: Rodriguez Depo.,	
10	26:22-27:17.	
11	191. (Repeat of UF 2, above.) Rodriguez was	
12	assigned to SED from October 2008 until May 2009.	
13	Supporting Evidence: Rodriguez Depo.,	
14	28:15-20; Lowers Decl., ¶ 4, 1:15.	
15	192. (Repeat of UF 3, above.) In May 2009, the	
16	SED unit was disbanded, and Rodriguez was	
17	transferred to a Patrol assignment.	`
18	Supporting Evidence: Rodriguez Depo.,	
19	26:15-21, 43:19-20; FAC ¶ 66.	
20	193. (Repeat of UF 4, above.) The SED	
21	assignment did not involve any additional	
22	compensation.	
23	Supporting Evidence: Rodriguez Depo., 16:	
24	4-15; Declaration of Trisha Welsh ("Welsh Decl."),	
25	¶¶ 3-5, 13:10-22; Declaration of Tim Stehr ("Stehr	
26	Decl."), ¶ 6, 4:25-:5:2.	
27	Note regarding supporting evidence: Rodriguez	
28		
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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	testified that the base rate of pay in these two	THE BOTT ON THE BYTTLE OF
3	assignments was the same, but asserted that more	
4	overtime work was available in the SED assignment.	
. 5	However, his payroll and timecard records show that	
6.	Rodriguez actually worked more overtime and was	
7	paid more after he transferred back to a Patrol	
8	assignment. The payroll records show that during	
9	the portion of 2009 that Rodriguez was assigned to	
10	SED, his average weekly overtime hours were 9.75	
11	and his average weekly pay was \$2,546.43. After he	
12	was transferred to a Patrol assignment in May 2009,	
13	Rodriguez's average weekly overtime hours for the	
14	remainder of 2009 were 11.63 and his average	
15	weekly pay was \$2,574.81.	
16	194. (Repeat of UF 5, above.) The SED	
17	assignment did not involve any change in rank.	
18	Supporting Evidence: Stehr Decl. ¶ 6, 4:25-	
19	5:2.	
20		
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22	· · · · · · · · · · · · · · · · · · ·	
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	PLAINTIFF'S SEPARATE STATEMENT OF DI	SPUTED FACTS IN OPPOSITION

Issue No. 22: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Because SED was disbanded, Rodriguez cannot establish that there was a job available for him in SED, which is a necessary element of the prima facie case for discrimination and retaliation.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE
195. (Repeat of UF 2, above.) Rodriguez was	AND SUPPORTING EVIDENCE
assigned to SED from October 2008 until May 2009.	
Supporting Evidence: Rodriguez Depo.,	
28:15-17; Lowers Decl. ¶ 4, 1:15	
196. (Repeat of UF 3, above.) In May 2009, the	
SED unit was disbanded, and Rodriguez was	
transferred to a Patrol assignment.	,
Supporting Evidence: Rodriguez Depo.,	
26:15-21; 43:19-20; FAC ¶ 66.	•
197. (Repeat of UF 8, above.) Sergeant Travis	
Irving and Officer Steve Karagiosian were also	
transferred back to Patrol assignments.	
Supporting Evidence: Rodriguez Depo.,	
43:11-44:6; Karagiosian Depo., 19:4-22, 31:7-10.	

<u>Issue No. 23</u>: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a

Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Rodriguez was assigned to SED by the same person who recommended SED be disbanded, and the legal doctrine of "same actor presumption" precludes Rodriguez from establishing a prima facie case for discrimination.

7	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
8	198. (Repeat of UF 9, above.) Rodriguez was	
9	selected for the SED assignment by the Captain over	
10	the SED unit, Janice Lowers.	
11	Supporting Evidence. Rodriguez Depo.,	
12	28:15-17; Lowers Decl. ¶ 4, 1:15.	
13	199. (Repeat of UF 10, above.) The decision to	
14	disband the SED unit was made based on the	
15	recommendation of Captain Lowers.	
16	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10;	
17	Lowers Decl. ¶ 5, 1:17-22.	·
	H · · · · · · · · · · · · · · · · · · ·	•

Issue No. 24: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for the transfer, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	200. (Repeat of UF 3, above.) In May 2009, the	71110 SOTTORTING BY IBBNOD
3	SED unit was disbanded, and Rodriguez was	
4	transferred to a Patrol assignment.	(to
5	Supporting Evidence: Rodriguez Depo.,	
6	26:15-21; 43:19-20; FAC ¶ 66.	
7	201. (Repeat of UF 12, above.) The SED unit was	
8	already in existence when Chief of Police Stehr	
. 9	assumed the position of Police Chief; he did not	
10	create the unit.	
11	Supporting Evidence: Stehr Decl. ¶ 8(b),	
12	5:22-6:3.	
13	202. (Repeat of UF 10, above.) The decision to	
14	disband the SED unit was made based on the	
15	recommendation of Captain Lowers.	
16	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10;	
17	Lowers Decl. ¶ 5, 1:17-22.	
18	203. (Repeat of UF 14, above.) Lowers'	
19	recommendation was accepted by Chief Stehr, who	
20	agreed with Lowers that disbanding the unit was the	3
21	best way to meet the BPD's needs.	· · · · · · · · · · · · · · · · · · ·
22	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10.	
23	204. (Repeat of UF 15, above.) At the time the	
24	decision to disband SED was made, the Department	
25	was facing budgetary constraints which left it	
26	understaffed. These constraints had kept the	
27	Department from fully staffing SED, and left it with	
28		
	7/	•

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	openings in its Patrol Division as well.	THE BOX OF CHANGE OF COMME
3	Supporting Evidence: Stehr Decl. ¶8(a),	
4.	5:12-20; Lowers Decl. ¶-5, 1:17-22.	
5	205. (Repeat of UF 16, above.) Captain Lowers	
6	believed, and Chief Stehr agreed, that it was more	•
7	important to address the needs of the Patrol Division	
8	than to provide additional assistance to the	
9	detectives, because the Patrol officers are the front-	
10	line officers who respond to calls for assistance and	
11	provide police presence "on the street."	
12	Supporting Evidence: Stehr Decl. ¶ 8(a),	
13	5:12-20; Lowers Decl. ¶ 5, 1:17-22.	
14	206. (Repeat of UF 17, above.) At the time the	
15	SED unit was disbanded it was staffed by a Sergeant	
16	and two police officers. The two officers were	
17	Rodriguez and Steve Karagiosian. The two other	
.18	positions in SED were vacant.	
19	Supporting Evidence: Rodriguez Depo.,	
20	28:24-29:13.	
21	207. (Repeat of UF 18, above.) Because the SED	***
22	unit could not be fully staffed (due to the budgetary	
23	constraints), Chief Stehr did not believe the unit	
24	could function effectively.	
25	Supporting Evidence: Stehr Decl. ¶ 8(a),	
26	5:12-20.	
27	208. (Repeat of UF 19, above.) Chief Stehr did	
28	75	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	not believe that a unit that focused on assisting	ZHAD BOLL OKTHOLEVIDENCE
3	detectives was the best way to use BPD resources.	
4	Supporting Evidence: Stehr Decl. ¶ 8(b),	
, 5	5:22-6:3.	
6	209. (Repeat of UF 20, above.) Chief Stehr	
7	envisioned a unit of uniformed officers (SED	
8	officers were plainclothes) within Patrol that would	
9	assist the Department with special problems in all	
10	areas. Chief Stehr announced his intention to create	
11	such a Special Problems Unit at the time he	
12	disbanded SED, but the unit has never been created	
13	or staffed due to budgetary constraints.	
14	Supporting Evidence: Stehr Decl. ¶ 8(b),	·
15	5:22-6:3.	
16	210. (Repeat of UF 21, above.) In January 2009,	
17	Chief Stehr had removed the Sergeant over SED,	·
18	Neil Gunn, due to concerns about the number of use	
19	of force incidents in which Gunn had been involved.	
20	Supporting Evidence: Stehr Decl. ¶ 8(c), 6:5-	
21	8	
22	211. (Repeat of UF 22, above.) Captain Lowers	
23	had counseled Gunn that, as a supervisor, he should	
24	try to avoid becoming personally involved in use of	
25	force situations.	
26	Supporting Evidence: Lowers Decl. ¶ 6,	1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -
27	1:24-27.	
28	i,	
	• · · · · · · · · · · · · · · · · · · ·	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	212. (Repeat of UF 23, above.) The Chief and the	AND SUFFURTING EVIDENCE
3	Captain concluded that Gunn was not following	
4 :	Captain Lowers' instructions in this regard.	
5	Supporting Evidence: Stehr Decl. ¶ 8(d),	
6.	6:10-19; Lowers Decl. ¶ 6, 1:24-27.	
7	213. (Repeat of UF 34, above.) Gunn was	
. 8	replaced as Sergeant over SED by Sergeant Travis	
9	Irving in January 2009.	
10	Supporting Evidence: Rodriguez Depo.,	
11	30:5-8; Stehr Decl. ¶ 8(c), 6:5-8.	
12	214. (Repeat of UF 25, above.) Irving was also	
13	assigned to supervisory duties at the Burbank animal	
14	shelter and could not devote his full time to	
15	supervising SED.	
16	Supporting Evidence: Stehr Decl. ¶ 8(c), 6:5-	
17	8.	
18	215. (Repeat of UF 26, above.) Chief Stehr was	
19	concerned about the fact that SED had been	
20	supervised by a Sergeant, specifically Sergeant	
21	Gunn, whose record on use of force might be subject	
22	to scrutiny.	,
23	Supporting Evidence: Stehr Decl. ¶ 8(d),	
24	6:10-19.	
25	216. (Repeat of UF 27, above.) At the time the	
26	Chief disbanded the SED unit, he had recently	
27	learned of allegations that Lieutenant Omar	V · · ·
28		
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MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Rodriguez had used unauthorized force in	AND SUPPORTING EVIDENCE
interrogating a witness and had intimidated another	
police officer into lying to cover-up his misconduct.	
Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
7:3.	
217. (Repeat of UF 28, above.) After learning	
about the allegations, Chief Stehr referred the matter	
to the Los Angeles County Sheriff's Department for	
investigation. Chief Stehr had also recently learned	
that the Federal Bureau of Investigation was	
conducting its own investigation of use of force by	
BPD officers.	
Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
7:3.	-
218. (Repeat of UF 29, above.) Chief Stehr was	
concerned that officers assigned to the SED unit	
could come under increased scrutiny based on the	
history of Sergeant Gunn. Supporting Evidence:	
Stehr Decl. ¶ 9, 6:21-7:3.	
219. (Repeat of UF 30, above.) Chief Stehr's	V
concern that officers assigned to the SED unit could	. ~~
come under increased scrutiny had nothing to do	
with any improper use of force by Officer Elfego	
Rodriguez himself.	
Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
7:3; Rodriguez Depo., 96:22-97:1 (Rodriguez	
	Rodriguez had used unauthorized force in interrogating a witness and had intimidated another police officer into lying to cover-up his misconduct. Supporting Evidence: Stehr Decl. ¶ 9, 6:21-7:3. 217. (Repeat of UF 28, above.) After learning about the allegations, Chief Stehr referred the matter to the Los Angeles County Sheriff's Department for investigation. Chief Stehr had also recently learned that the Federal Bureau of Investigation was conducting its own investigation of use of force by BPD officers. Supporting Evidence: Stehr Decl. ¶ 9, 6:21-7:3. 218. (Repeat of UF 29, above.) Chief Stehr was concerned that officers assigned to the SED unit could come under increased scrutiny based on the history of Sergeant Gunn. Supporting Evidence: Stehr Decl. ¶ 9, 6:21-7:3. 219. (Repeat of UF 30, above.) Chief Stehr's concern that officers assigned to the SED unit could come under increased scrutiny had nothing to do with any improper use of force by Officer Elfego Rodriguez himself. Supporting Evidence: Stehr Decl. ¶ 9, 6:21-

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
. 2	testified that he heard rumors that SED had	THIS SOLVENING STREET
3	developed a reputation as having "dirty cops" who	
4	"beat suspects," but that the rumors related to	
5	conduct that occurred before he was in SED).	
6	220. (Repeat of UF 31, above.) (Repeat of UF 15,	
7	above.) Rodriguez had not been in the SED when	
8	the events giving rise to Chief Stehr's concerns	
9	about Sergeant Gunn had taken place.	
10	Supporting Evidence: Stehr Decl. ¶ 9, 6:21-	
11	7:3 .	
12	221. (Repeat of UF 32, above.) UF 15 through 31,	
13	above, set out the reasons why Chief Stehr accepted	
14	Captain Lowers' recommendation to disband SED.	
15	Supporting Evidence: Stehr Decl. ¶ 8, 5:7-	·
16	6:19.	
17	Evidence that Rodriguez himself cannot dispute	
18	these reasons is his testimony that:	
19	(1) He has no basis for thinking that Chief Stehr had	
20	any dislike for Hispanic or Guatemalan people	
21	(Rodriguez Depo., 384:11-16);	
22	(2) His response in deposition, when asked whether	
23	he believed that the closure of SED had anything to	
24	do with his ethnicity or national origin: "Not	
25	necessarily, per se."	
26	"Q Do you believe that the fact that I'm sorry. Do you believe that your ethnicity or national origin played any role in the decision to close SED?	
27	[Objection omitted.]	
28	[3]	

1 ·	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
· 2	THE WITNESS: Not necessarily, per se."	
3	Rodriguez Depo., 443:16-21.	
4	(3) His testimony that his belief that he was	¥ ./i
5	retaliated against was just a "feeling" on his part.	
6	(Rodriguez Depo., 349:5-19); and	
7	(4) His testimony that his belief that the closure of	
8.	SED was intended to hurt him was speculation on his	
9	part:	
10	"Q. The chief made the decision to close SED; correct?	
11	[Objection omitted.]	
12	THE WITNESS: Yes.	
13	Q. BY MR. MICHAELS: And in making that	·
14	decision, he intended to hurt you and Officer Karagiosian, but not the sergeant in charge of that	
15	division, Sergeant Irving. That's your opinion; correct?	
16	[Objection omitted.]	
17	THE WITNESS: Yes.	
18	Q. BY MR. MICHAELS: And that is speculation	
19	on your part; correct?	
20	A. Yes."	
21	Rodriguez Depo., 46:21-47:10.	
22	1	
23	Issue No. 25: The Fifth Cause of Action for failure to	prevent harassment, discrimination and
24	retaliation under the FEHA, as set forth in the FAC, in	ncludes and subsumes what is actually a
25	separate cause of action based on Burbank's decision	not to select Rodriguez first for a position on
26	the SWAT Team. On said cause of action, there is no	triable issue as to any material fact and
27	Burbank is entitled to judgment as a matter of law for	the following reason: As a matter of law,
28	Burbank's decision not to choose Rodriguez first for t	the SWAT Team position is not an actionable

1	"adverse employment action," which is a necessary ele	ement of the prima facie case for
2	discrimination and retaliation.	
3		
4	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
5,	222. (Repeat of UF 33, above.) Rodriguez was	AND SUPPORTING EVIDENCE
6	assigned to the SWAT Team in February or March	
7	2009.	
8	Supporting Evidence: Rodriguez Depo.,	
9	143:19-23.	
10	223. (Repeat of UF 34, above.) Rodriguez	
11	voluntarily left his SWAT Team assignment in late	
12	2009 in order to accept an assignment on the U.S.	
13	Marshall's Task Force.	
14	Supporting Evidence: Rodriguez Depo.,	
15	449:11-23.	
16	224. (Repeat of UF 35, above.) The SWAT Team	
17	trains one day a month.	·
18	Supporting Evidence: Rodriguez Depo.,	
19	137:15-19.	
20	225. (Repeat of UF 36, above.) During the time	
21	Rodriguez was on the SWAT Team, he was never	
22	actually called out on an assignment. Rodriguez is	·ı
23	aware of only one occasion where the SWAT Team	
24	was called out during the time he was on the SWAT	
25 [°]	Team. He missed that assignment because he was	
26	out of range to receive the call out on his cell phone.	्र इंग्डर
27	Supporting Evidence: Rodriguez Depo.,	
28		
	81	•

FACTS AND SUPPORTING EVIDENCE 143:16-17, 159:25-160:23; Lynch Decl., ¶3, 8:11- 15. 226. (Repeat of UF 37, above.) Members of the SWAT Team receive no extra compensation for the assignment. Supporting Evidence: Lynch Decl. ¶4, 8:17- 20. 227. (Repeat of UF 38, above.) Members of the SWAT Team receive no change in rank. Supporting Evidence: Lynch Decl. ¶4, 8:17- 20. Issue No. 26: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez first for a position the SWAT Team. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its decision not to cho Rodriguez first for the SWAT Team position, and Rodriguez cannot show that the reason was pretextual.		
143:16-17, 159:25-160:23; Lynch Decl., ¶3, 8:11- 15. 226. (Repeat of UF 37, above.) Members of the SWAT Team receive no extra compensation for the assignment. Supporting Evidence: Lynch Decl. ¶4, 8:17- 20. 227. (Repeat of UF 38, above.) Members of the SWAT Team receive no change in rank. Supporting Evidence: Lynch Decl. ¶4, 8:17- 20. 1ssue No. 26: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez first for a position the SWAT Team. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its decision not to cho Rodriguez first for the SWAT Team position, and Rodriguez cannot show that the reason was pretextual. MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE 228. (Repeat of UF 39, above.) The SWAT Team is a unit which responds to specific types of		OPPOSING PARTY'S RESPONSE
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228. (Repeat of UF 39, above.) The SWAT Team is a unit which responds to specific types of		OPPOSING PARTY'S RESPONSE
		AND SUPPORTING EVIDENCE
emergencies, such as hostage situations and serving	is a unit which responds to specific types of	
	emergencies, such as hostage situations and serving	<i>f</i>
high risk search or arrest warrants.		A Section 1

1	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
2	Supporting Evidence: Lynch Decl. ¶ 3, 8:11-	AND SUPPORTING EVIDENCE
3	15.	
4	229. (Repeat of UF 40, above.) Officers wishing	/
5	to serve on the SWAT Team must have at least two	
6	years of service on the BPD and must pass a	
7.	shooting range test and a physical agility/obstacle	
8 .	course test.	
9 .	Supporting Evidence: Rodriguez Depo.,	
10	112:21-25, 113:9-25; Lynch Decl. ¶ 4, 8:17-20.	
- 11	230. (Repeat of UF 41, above.) Three other	
12	officers were selected for the SWAT assignment	
13	ahead of Rodriguez: Jeff Barcus, Adam Cornils and	
14	Steve Turner.	
15	Supporting Evidence: Rodriguez Depo.,	
16	128:21-129:10.	
17	231. (Repeat of UF 42, above.) Officer Barcus	
18	had worked as a Deputy County Sheriff before	
19	joining the BPD, and had worked on the Sheriff	
20	Department's Emergency Response Team.	
21	Supporting Evidence: Lynch Decl. ¶ 5(a),	
22	8:27-9:4. Evidence that Rodriguez himself cannot	•
23	dispute this fact is his testimony that he has no	
24	information about the qualifications of Officer	
25	Barcus to be on the SWAT Team. Rodriguez Depo.,	
26	144:18-20.	
27	232. (Repeat of UF 43, above.) Officer Cornils	
28		<u> </u>

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	had previously worked for the Monrovia Police	AND BOIL ON THE BUILD BY
3	Department, and spent four years as a member of	
4	their SWAT-type team and of a multi-jurisdictional	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
5	SWAT-type team serving Monrovia and adjacent	
6	jurisdictions.	
7	Supporting Evidence: Lynch Decl. ¶ 5(b),	
8	9:6-10. Evidence that Rodriguez himself cannot	
9	dispute this fact is his testimony that he has no	
10	information about the qualifications of Officer	
11	Cornils to be on the SWAT Team. Rodriguez Depo.,	
12	144:21-23.	
13	233. (Repeat of UF 44, above.) Officer Turner	
14	was a former Marine Corps infantryman, fire team	
15	leader, and qualified expert marksman, and was	
16	trained in close quarters combat tactics.	
17	Supporting Evidence: Lynch Decl. ¶ 5(c),	
18	9:12-14. Evidence that Rodriguez himself cannot	
19	dispute this fact is his testimony that he has no	
20	information about the qualification of Officer Turner	
21	to be on the SWAT Team. Rodriguez Depo.,	
22	144:24-145:1.	
23	234. (Repeat of UF 45, above.) Rodriguez did not	
24 .	have the same training and experience as Barcus,	
25	Comils or Turner.	5.74
26	Supporting Evidence: Lynch Decl. ¶ 6, 9:16-	:
27	17.	
28		

·		
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	235. (Repeat of UF 46, above.) The decision to	THIS SOLI OKTING DAIDDINGS
3	select Officers Barcus, Cornils, and Turner for the	
4	SWAT Team before Rodriguez was made by	
5	Captain Pat Lynch.	
6	Supporting Evidence: Lynch Decl. ¶ 7, 9:19-	
7	25.	,
8	236. (Repeat of UF 47, above.) Captain Lynch's	
,9	decision to select Officers Barcus, Cornils, and	
10	Turner for the SWAT Team before Rodriguez was	
11	based on the qualifications of these officers,	
12	including the fact that each of Officers Barcus,	
13	Cornils and Turner had past experience and special	
14	training which made them particularly well-qualified	
15	for SWAT Team duties, and the fact that Barcus,	
16	Cornils, and Turner performed better than Rodriguez	
17	on the shooting range test and/or the physical	·
.18	agility/obstacle course test.	
19	Supporting Evidence: Lynch Decl. ¶ 5, 8:22-	
20	9:14 and ¶ 7, 9:19-25.	
21	Evidence that Rodriguez himself cannot dispute this	. News
22	fact is his testimony that he has no information about	50.86
23	the qualifications of the officers who were selected	
24	for the SWAT Team, or why those officers were	
25	selected:	
26 27	"Q. BY MR. MICHAELS:/ What do you know about the qualifications of Officer Barcus to be on the SWAT team?	
28	A. Nothing.	
	85	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
$\begin{bmatrix} 2 \\ 3 \end{bmatrix}$	Q. What do you know about the qualifications of Officer Cornils to be on the SWAT team?	
4	A. Nothing.	
5	Q. What do you know about the qualifications of Officer Turner to be on the SWAT team?	
6.	A. Nothing."	· · · · · · · · · · · · · · · · · · ·
7	(Rodriguez Depo., 144:18-145:1)	
8	***	
.0	"BY MR. MICHAELS: What factors were the deciding factors in selecting Officer Barcus over the other officers on the list when he was selected?	
1	[Objection omitted.]	
.2	THE WITNESS: I don't know.	
4	Q. BY MR. MICHAELS: Same question for Officer Cornils.	
5	[Objection omitted.]	•
6	THE WITNESS: I don't know.	
7 8	Q. BY MR. MICHAELS: Same question for Officer Turner.	
9	[Objection omitted.]	
0	THE WITNESS: I don't know."	
1	(Rodriguez Depo., 147:7-22.)	
2	Rodriguez also testified that his belief that he was	
.3	retaliated against was just a "feeling" on his part.	
.4 .5	Rodriguez Depo., 349:5-19.	
6	237. (Repeat of UF 48, above.) When Rodriguez	
.7 .7	was selected for the SWAT Team, he was selected	
8	ahead of other applicants who were white.	·
	86	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Lynch Decl. ¶ 8, 10:1-	TAIN BOLL GIVING BY IDDINGS
3	2.	
4	7.	The state of the s
5	Issue No. 27: The Fifth Cause of Action for failure to	prevent harassment, discrimination and
6	retaliation under the FEHA, as set forth in the FAC, in	cludes and subsumes what is actually a
7	separate cause of action based on Burbank's decision r	not to select Rodriguez for a temporary
8	training assignment. On said cause of action, there is	no triable issue as to any material fact and
9	Burbank is entitled to judgment as a matter of law for	the following reason: As a matter of law,
10	Burbank's decision not to select Rodriguez for the tem	porary training assignment is not an
11	actionable "adverse employment action," which is a ne	ecessary element of the prima facie case for
12	discrimination and retaliation.	•
13	·	
14	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
15	238. (Repeat of UF 49, above.) Rodriguez was	AND SOLLOKTING EVIDENCE
16	not chosen to fill in as a temporary training officer	
17	for a one-week period while the regular training	•
18	officer was on vacation during the period from June	
19	27 through July 4, 2009.	
20	Supporting Evidence: Rodriguez Depo.,	
21	19:13-20:5; Rosoff Decl., ¶ 3, 11:7-13.	
22	239. (Repeat of UF 50, above.) The temporary	
23	training assignment (which lasted for one week) did	
24	not involve any additional compensation.	
25	Supporting Evidence: Rodriguez Depo.,	
26	21:5-15.	
27	240. (Repeat of UF 51, above.) The temporary	
28		<u> </u>
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•		
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	training assignment (which lasted for one week) did	THE BOTT ORTHOD VIDENCE
3	not involve any change in rank.	
4	Supporting Evidence: Stehr Decl. ¶ 7, 5:4-5.	
5	241. (Repeat of UF 52, above.) Rodriguez had	>
6	served as a Field Training Officer from January 2007	
7	until to October 2008.	
8.	Supporting Evidence: FAC ¶ 60; Stehr Decl.	
9	¶ 6, 4:25-5:2.	
10		
11	Issue No. 28: The Fifth Cause of Action for failure to	prevent harassment, discrimination and
12	retaliation under the FEHA, as set forth in the FAC, in	cludes and subsumes what is actually a
13	separate cause of action based on Burbank's decision r	not to select Rodriguez for a temporary
14	training assignment. On said cause of action, there is a	no triable issue as to any material fact and
15	Burbank is entitled to judgment as a matter of law for	the following reason: Burbank has
16 .	proffered a legitimate, non-discriminatory and non-reta	aliatory reason for its decision not to select
17	Rodriguez for the temporary training assignment, and	Rodriguez cannot show that the reason was
18	pretextual.	
19		
20	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
21	FACTS AND SUPPORTING EVIDENCE 242. (Repeat of UF 49, above.) Rodriguez was	AND SUPPORTING EVIDENCE
22	not chosen to fill in as a temporary training officer	*
23	for a one-week period while the regular training	
24	officer was on vacation during the period from June	
25	27 through July 4, 2009.	
26	Supporting Evidence: Rodriguez Depo.,	
27	19:13-20:5; Rosoff Decl. ¶ 3, 11:7-13.	· · · · · · · · · · · · · · · · · · ·
		·

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	243. (Repeat of UF 54, above.) The officers	AND SUIT ORTHNO EVIDENCE
3	assigned to fill in as temporary training officers	
4	during this week were Officers Krueger and	
5	Edwards.	
6.	Supporting Evidence: Rodriguez Depo.,	
7	23:1-13; Rosoff Decl. ¶ 3, 11:7-13.	
8	244. (Repeat of UF 55, above.) Officers Kruger	
9	and Edwards were selected by the Watch	
10	Commander, Lieutenant Eric Rosoff, based on the	
11	fact that they were good officers who had been	
12	working continuously in Patrol for at least a year and	
13	who had expressed an interest in becoming regular	
14	Field Training Officers; Rosoff wanted to assist them	
15	in their career development by giving them an	
16	opportunity to act as Field Training Officers.	
17	Supporting Evidence: Rosoff Decl. ¶ 4, 8:12-	·
18	16.	
19	245. (Repeat of UF 52, above.) Rodriguez had	
20 .	served as a Field Training Officer from January 2007	
21	until October 2008.	
22	Supporting Evidence: FAC ¶ 60; Stehr Decl.	
23	¶ 6, 4:25-5:2.	
24		
	n ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' '	

<u>Issue No. 29</u>: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA includes a claim for failure to prevent harassment. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a

1	matter of law for the following reason: Rodriguez was	not subjected to severe or pervasive
2	harassment.	
3		
4	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
5	246. (Repeat of UF 65, above.) The Department	
6	received an anonymous letter complaining about	
7	racial and ethnic remarks made by unnamed BPD	
8	officers.	
9	Supporting Evidence: Rodriguez Depo.,	
0	234:16-20; Stehr Decl. ¶ 3, 4:12-15.	
1	247. (Repeat of UF 66, above.) Rodriguez did not	
2	send the anonymous letter, and he does not know	
3	who did.	
4	Supporting Evidence: Rodriguez Depo.,	
5	235:3-5.	
6	248. (Repeat of UF 67, above.) An outside	
7	attorney/investigator, Irma Rodriguez Moisa, was	·
8	hired by BPD to conduct an independent	
9	investigation in to the allegations contained in the	
0	anonymous letter.	
1	Supporting Evidence: Rodriguez Depo.,	
2	238:1-8; Stehr Decl. ¶'3, 4:12-15.	•
3	249. (Repeat of UF 68, above.) Moisa	
4	interviewed more than a dozen officers in Spring	
5	2008.	
6	Supporting Evidence: Rodriguez Depo.,	i gan
7	345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.	
8		
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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	250. (Repeat of UF 69, above.) Rodriguez was	AND SOLL OKTING EVIDENCE
3	one of the officers interviewed by Moisa.	
4	Supporting Evidence: Rodriguez Depo.,	
5	238:9-10.	34
6	251. (Repeat of UF 70, above.) Rodriguez did not	
7	seek out Moisa to make any report or complaint.	
8	Moisa contacted him for an interview.	
9	Supporting Evidence: Rodriguez Depo.,	
10	349:24-350:11.	
1 1	"Q: But it was not a case of you voluntarily initiating	
12	a contact with her to make a complaint. You responded to a request to be interviewed; correct?	
13	A: Yes."	
14	252. (Repeat of UF 71, above.) When he was	
15	interviewed by Moisa, Rodriguez told her that he had	
16	heard some derogatory comments made about	
17	Hispanics years before, when he was a probationary	
18	officer, but that since he had become a more	
19	experienced officer nobody would make a comment	
20	like that in his presence.	
21	Supporting Evidence:	
22	"Q. Other strike that. You do you recall telling	
23	Irma Rodriguez that when you were a new officer a young officer in the department, still on probation,	
24	or shortly thereafter, that you had heard derogatory remarks, but you couldn't recall exactly what they	
25	were, made about Hispanics?	
26	A. Yes.	
27	Q. Do you recall telling Irma Rodriguez that since you had become a more experienced officer, that	
28	people knew you had a strong personality and that now nobody would make a statement like that.	
	now hobouty would make a statement like that.	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
negative about Hispanics, in your presence?	7010 SOTTORTING DVIDENCE
A. Something to that effect."	
(Rodriguez Depo., 242:6-18.)	

"Q. Okay. Did any of these remarks get said after you were on probation in your presence?	
[Objection omitted,]	
Q. BY MR. MICHAELS: After the time that you successfully completed your probation.	
A. Most of these comments I heard were earlier in my career, right around that time, my first year don't	
know specifically if some bridged that line after after the year mark. But shortly after that I left the	
Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."	
(Rodriguez Depo., 248:5-16.)	
253. (Repeat of UF 72, above.) Rodriguez told	
Moisa he heard Hispanics referred to as "paisas"	
(Spanish slang for countryman or "paisano"),	
"12500's" (reference to the Vehicle Code Section	
prohibiting driving without a licenses), "those	
people" or "your peeps," and "Mojados."	
Rodriguez also told Moisa he had heard comments	
about Armenians.	
Supporting Evidence: Rodriguez Depo.,	
241:9-12, 243:5-244:24, 244:25-245:12, 245:18-	
246:5, 246:6-246:9.	
254. (Repeat of UF 73, above.) Rodriguez began	
working for the BPD in 2004.	
Supporting Evidence: Rodriguez Depo.,	• ,

MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
FACTS AND SUPPORTING EVIDENCE 126:24 – 127:1.	AND SUPPORTING EVIDENCE
255. (Repeat of UF 74, above.) Rodriguez	
identified only two individuals who made any of	
these remarks: Officers Aaron Kendrick and Jared	
Cutler.	
Supporting Evidence: Rodriguez Depo.,	
240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-	
12, 406:5-13, 406:14-20.	
"Q. Do you recall anyone specifically who made	
those remarks?	
A. I've heard Kendrick refer to them as 'your peeps' several times.	
Q. Anyone else?	
A. Cutler.	
Q. Anyone else?	
A. Not specifically."	
Rodriguez Depo., 245:23-246:5.	
256. (Repeat of UF 75, above.) Officer Kendrick	•
was disciplined as a result of Moisa's investigation	
and a follow-up internal investigation.	
Supporting Evidence: Rodriguez Depo.,	
248:17-23; Stehr Decl. ¶ 5, 4:21-23.	
257. (Repeat of UF 76, above.) Officer Cutler left	
the Department before any discipline resulting from	
Moisa's investigation could be considered.	
Supporting Evidence: Rodriguez Depo.,	
248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	258. (Repeat of UF 77, above.) Rodriguez's	
3	report to Moisa was accurate and complete.	
4	Supporting Evidence:	
5	"Q. So you told the truth, the whole truth, and	
6	nothing but the truth to Irma Moisa Rodriguez -	
7	A. As I remember it, yes."	
8	(Rodriguez Depo., 238:11-239:5.)	
9	259. (Repeat of UF 78, above.) Rodriguez	
10	reaffirmed in his deposition testimony what he had	
11	told Moisa: that all of the derogatory comments he	
12	could recall were made during the first year or so of	
13	his career.	
14	Supporting Evidence:	
15	"Q. Okay. Did any of these remarks get said after you were on probation in your presence?	
16	MR. GRESEN: Objection. Vague and ambiguous as to "after you were on probation."	
17 18	Q. BY MR. MICHAELS: After the time that you successfully completed your probation.	
19	A. Most of these comments I heard were earlier in	
20	my career, right around that time, my first year on. I don't know specifically if some bridged that line	
21	after after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."	ניבי
22 23	(Rodriguez Depo., 248:5-16.)	
24	260. (Repeat of UF 79, above.) Rodriguez	
25	initially testified that his report to Moisa included all	
26	of the derogatory terms he could recall hearing about	
27	الم المستريد	
28	Hispanics.	
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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	Supporting Evidence: Rodriguez Depo.,	The state of the s
3	246:13-247:10.	
4	261. (Repeat of UF 80, above.) Rodriguez later	
5	testified to hearing the additional terms "gardeners,"	
6	"Julios," "half breed," and "wetback."	
7	Supporting Evidence: Rodriguez Depo.,	
8	420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	
9	429:21.	
10	262. (Repeat of UF 81, above.) Rodriguez is	
11	unable to remember who made any of the comment	
12	identified in UF 80, or when these terms were used,	
13	or the context in which they were used.	
14	Supporting Evidence: Rodriguez Depo.,	
15	420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	
16	429:21.	
17	263. (Repeat of UF 82, above.) Sergeant Kelly	
18	Frank made the following remark to Rodriguez	
19	during Rodriguez's first year to eighteen months in	
20	the BPD: "You look like the bad guys we chase."	
21	Supporting Evidence: Rodriguez Depo.,	
22	310:13-310:23.	******
23	264. (Repeat of UF 83, above.) In making this	
24	comment, Frank was referring to the mid-1960's	
25	Chevrolet Rodriguez drove, which Frank felt looked	\$ - A - 2/
26	like the type of car the Burbank Police Department	
27	often sees driven by street racers. Frank did not	1
28		:
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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	make this comment for any reason related to	
3	Rodriguez's ethnicity or national origin.	
4	Supporting Evidence: Declaration of Kelly	
5	Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-	
6	20.	
7	265. (Repeat of UF 84, above.) Rodriguez never	
8	asked Frank what he had meant by this comment.	
9	Supporting Evidence: Rodriguez Depo.,	
10	314:10-12.	
11	266. (Repeat of UF 85, above.) In early 2009,	
12	Rodriguez observed some quotations written on a	
13	dry erase board in the Detective Bureau, which	
14	Rodriguez was told were taken from what a witness	
15	had said during an interview.	
16	Supporting Evidence: Rodriguez Depo.,	
17	202:11-21, 289:13-20, 204:18-205:6, and Exhibit	
1.8	146 to Rodriguez Depo.	
19	267. (Repeat of UF 86, above.) The phrases on	
20	the dry erase board were as follows:	
21	"My friend100 percent."	
22	"I tell you everything100 percent."	
23	"Sir, please, I beg you."	
24	"Swear to God not 100 percent but 1000 percent."	
25	"Burbank police: Sir, what happened? Tell me.	
26	What do you know? Well what do you know?."	
27	Supporting Evidence: Rodriguez Depo.,	
28		

FAC	IG PARTY'S UNDISPUTED MATERIAL CTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE			
	95:15 and Exhibit 146 to Rodriguez Depo.	· · · · · · · · · · · · · · · · · · ·			
3 268. (F	Repeat of UF 87, above.) Rodriguez				
4 considere	ed these phrases to be referring to				
5 Armenia	ns because of the use of the phrase "100			٠.	
6 percent."					,
7 Si	upporting Evidence: Rodriguez Depo.,				**
3 289:21-2	90:24.				
9 269. (I	Repeat of UF 88, above.) Rodriguez	• • • • • • • • • • • • • • • • • • • •	-		
considere	ed the use of this phrase "100 percent"				
disrespec	etful or demeaning to Armenians.		•		
\sim \sim \sim \sim \sim	upporting Evidence: Rodriguez Depo.,	•		-	
3 290:22-2	92-11.				
4 270. (I	Repeat of UF 89, above.) Rodriguez has				
heard Ar	menians (including Armenian officers in the				
6 BPD) use	e the words "100 percent."				
7. S	upporting Evidence: Rodriguez Depo.,				
8 290:22-2	92:25.			·	
9 271. (1	Repeat of UF 90, above.) Rodriguez's co-		<u></u>		•
plaintiff	Steve Karagiosian (who is Armenian) also	•	•		
1 observed	the quotations written on the dry erase	,		•	
2 board an	d discussed the quotations with Lieutenant				
Armen D	Dermenjian in Rodriguez's presence.				
4 S	upporting Evidence: Rodriguez Depo.,				•
⁵ 209:1-24	; FAC ¶ 3.	•			
6 272. (1	Repeat of UF 91, above.) During that	· · · · · · · · · · · · · · · · · · ·		-	
7 conversa	tion, Rodriguez told Dermenjian that he also				
8					
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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	felt the comments on the board were "inappropriate."	
3	Rodriguez does not recall saying anything else on	
4	the subject. Rodriguez did not make any other report	
5	of the incident because Karagiosian already had.	
6	Supporting Evidence: Rodriguez Depo.,	
7	214:16-23, 215:6-17.	
. 8	273. (Repeat of UF 92, above.) Rodriguez	
9	testified that the only people he believed deserved	
10	discipline for any harassing, discriminatory or	
11	retaliatory conduct were Kendrick, Cutler, Frank,	
12	and whoever wrote the remarks on the dry erase	
13	board.	
14	Supporting Evidence: Rodriguez Depo.,	
15	282:18-284:11.	
16	274. (Repeat of UF 93, above.) Rodriguez	
17	discussed some of the comments he heard with his	
18	co-plaintiff Omar Rodriguez but he ceased having	
19	any such conversations in early 2008 because, in his	
20	words, "my career had moved on and I had kind of	
21	gotten away from Officer Cutler and Officer	
22	Kendrick, and I was just kind of away on my own."	
23	Supporting Evidence: Rodriguez Depo.,	
24	314:13-315:22, 357:5-19.	
25	275. (Repeat of UF 94, above.) Rodriguez did not	
26	discuss these matters with Omar Rodriguez for the	
27	purpose of reporting them. He did not want them	
28		
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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	reported. Instead, he told Omar Rodriguez about the	THE BOTT ORTHOD DVIDENCE
3	comments because he trusted Omar Rodriguez not to	
4	repeat them to anyone else.	
5.	Supporting Evidence: Rodriguez Depo.,	
6	376:5-11.	
7		
8	Issue No. 30: The Fifth Cause of Action for failure to	prevent harassment, discrimination and
9	retaliation under the FEHA includes a claim for failure	e to prevent harassment. On said cause of
10	action, there is no triable issue as to any material fact a	and Burbank is entitled to judgment as a
11	matter of law for the following reason: Rodriguez's ha	arassment claims are time-barred under
12	California Government Code Section 12960(d).	• · · · · · · · · · · · · · · · · · · ·
13		
14	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE
15	FACTS AND SUPPORTING EVIDENCE 276. (Repeat of UF 95, above.) Rodriguez filed	AND SUPPORTING EVIDENCE
16	his DFEH complaint on May 27, 2009. FAC ¶ 67,	
17	Exhibit G thereto.	
18	277. (Repeat of UF 65, above.) The Department	
19	received an anonymous letter complaining about	
20 .	racial and ethnic remarks made by unnamed BPD	
21	officers.	· · · · · · · · · · · · · · · · · · ·
22	Supporting Evidence: Rodriguez Depo.,	
23	234:16-20; Stehr Decl. ¶ 3, 4:12-15.	
24	278. (Repeat of UF 66, above.) Rodriguez did not	
25.	send the anonymous letter, and he does not know	
26	who did.	Ext. 1
27	Supporting Evidence: Rodriguez Depo.,	
28	99	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
235:3-5.	THIS SOTT OFFICE OF THE STATE O
279. (Repeat of UF 67, above.) An outside	
attorney/investigator, Irma Rodriguez Moisa, was	
hired by BPD to conduct an independent	· · · · · · · · · · · · · · · · · · ·
investigation in to the allegations contained in the	
anonymous letter.	
Supporting Evidence: Rodriguez Depo.,	
238:1-8; Stehr Decl. ¶ 3, 4:12-15.	
280. (Repeat of UF 68, above.) Moisa	
interviewed more than a dozen officers in Spring	
2008.	
Supporting Evidence: Rodriguez Depo.,	
345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.	
281. (Repeat of UF 69, above.) Rodriguez was	
one of the officers interviewed by Moisa.	
Supporting Evidence: Rodriguez Depo.,	
238:9-10.	
282. (Repeat of UF 70, above.) Rodriguez did not	
seek out Moisa to make any report or complaint.	1
Moisa contacted him for an interview.	
Supporting Evidence: Rodriguez Depo.,	, who 2
349:24-350:11.	
"Q: But it was not a case of you voluntarily initiating	
a contact with her to make a complaint. You responded to a request to be interviewed; correct?	
A: Yes."	$\int_{X_{i}}^{X_{i}} dx = \int_{X_{i}}^{X_{i}} dx = \int_{X_{i}}^{X_{i}} dx$
283. (Repeat of UF 71, above.) When he was	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	interviewed by Moisa, Rodriguez told her that he had	AND BOTT ON THIS EVIDENCE
3	heard some derogatory comments made about	
4,	Hispanics years before, when he was a probationary	
5	officer, but that since he had become a more	
6	experienced officer nobody would make a comment	
, 7	like that in his presence.	,
8	Supporting Evidence:	
9	"Q. Other strike that. You do you recall telling Irma Rodriguez that when you were a new officer	
10	a young officer in the department, still on probation,	
11	or shortly thereafter, that you had heard derogatory remarks, but you couldn't recall exactly what they were, made about Hispanics?	
12	*	
13	A. Yes.	
14	Q. Do you recall telling Irma Rodriguez that since you had become a more experienced officer, that	
15	people knew you had a strong personality and that now nobody would make a statement like that, negative about Hispanics, in your presence?	
16	A. Something to that effect."	
17	(Rodriguez Depo., 242:6-18.)	
18	***	
19 20	"Q. Okay. Did any of these remarks get said after you were on probation in your presence?	
21	[Objection omitted.]	· (,
22	Q. BY MR. MICHAELS: After the time that you	
23	successfully completed your probation.	
24	A. Most of these comments I heard were earlier in my career, right around that time, my first year don't	
25	know specifically if some bridged that line after after the year mark. But shortly after that I left the	
26	Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."	
27	(Rodriguez Depo., 248:5-16.)	
28		

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1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	284. (Repeat of UF 72, above.) Rodriguez told	
3	Moisa he heard Hispanics referred to as "paisas"	
4	(Spanish slang for countryman or "paisano"),	•
5 :-	"12500's" (reference to the Vehicle Code Section	
6	prohibiting driving without a licenses), "those	
7	people" or "your peeps," and "Mojados."	
8	Rodriguez also told Moisa he had heard comments	
9	about Armenians.	
10	Supporting Evidence: Rodriguez Depo.,	
.11	241:9-12, 243:5-244:24, 244:25-245:12, 245:18-	
12	246:5, 246:6-246:9.	
13	285. (Repeat of UF 73, above.) Rodriguez began	
14	working for the BPD in 2004.	
15	Supporting Evidence: Rodriguez Depo.,	
16	126:24 – 127:1.	
17	286. (Repeat of UF 74, above.) Rodriguez	
18	identified only two individuals who made any of	
19	these remarks: Officers Aaron Kendrick and Jared	
20	Cutler.	
21	Supporting Evidence: Rodriguez Depo.,	
22,	240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-	
23	12, 406:5-13, 406:14-20.	
24	"Q. Do you recall anyone specifically who made	
25	those remarks?	
26	A. I've heard Kendrick refer to them as 'your peeps' several times.	
27	Q. Anyone else?	
28	A. Cutler.	<u> </u>
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	1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	2 · 3	Q. Anyone else?	THIS SCIT ORGANICE.
	4	A. Not specifically."	
	5	Rodriguez Depo., 245:23-246:5.	
	6	287. (Repeat of UF 75, above.) Officer Kendrick	
	7	was disciplined as a result of Moisa's investigation	
	8	and a follow-up internal investigation.	
	9	Supporting Evidence: Rodriguez Depo.,	
	10	248:17-23; Stehr Decl. ¶ 5, 4:21-23.	
	11	288. (Repeat of UF 76, above.) Officer Cutler left	
·	12	the Department before any discipline resulting from	
	13	Moisa's investigation could be considered.	
	14	Supporting Evidence: Rodriguez Depo.,	
	15	248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.	
	16	289. (Repeat of UF 77, above.) Rodriguez's	
	17	report to Moisa was accurate and complete.	
•	18	Supporting Evidence:	
	19	"Q. So you told the truth, the whole truth, and nothing but the truth to Irma Moisa Rodriguez –	
	20	A. As I remember it, yes."	
	21 22	(Rodriguez Depo., 238:11-239:5.)	
	23	290. (Repeat of UF 78, above.) Rodriguez	
	24	reaffirmed in his deposition testimony what he had	
•	25	told Moisa: that all of the derogatory comments he	
	26	could recall were made during the first year or so of	
	27	his career.	
	28	Supporting Evidence:	
		103	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
"Q. Okay. Did any of these remarks get said after you were on probation in your presence?	
MR. GRESEN: Objection. Vague and ambiguous as to "after you were on probation."	
Q. BY MR. MICHAELS: After the time that you	
successfully completed your probation.	
A. Most of these comments I heard were earlier in my career, right around that time, my first year on. I don't know specifically if some bridged that line	
after after the year mark. But shortly after that I	
left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."	
(Rodriguez Depo., 248:5-16.)	
291. (Repeat of UF 79, above.) Rodriguez	
initially testified that his report to Moisa included all	
of the derogatory terms he could recall hearing about	
Hispanics.	
Supporting Evidence: Rodriguez Depo.,	
246:13-247:10.	
292. (Repeat of UF 80, above.) Rodriguez later	
testified to hearing the additional terms "gardeners,"	
"Julios," "half breed," and "wetback."	
Supporting Evidence: Rodriguez Depo.,	
420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	
429:21.	
293. (Repeat of UF 81, above.) Rodriguez is	
unable to remember who made any of the comment	
identified in UF 80, or when these terms were used,	
or the context in which they were used.	
•	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
. 2	420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-	THIS COLL CHARGE VIEW
3	429:21.	
4	294. (Repeat of UF 82, above.) Sergeant Kelly	
. 5	Frank made the following remark to Rodriguez	
6	during Rodriguez's first year to eighteen months in	
7	the BPD: "You look like the bad guys we chase."	
8	Supporting Evidence: Rodriguez Depo.,	
9 ,	310:13-310:23.	
10	295. (Repeat of UF 83, above.) In making this	
11	comment, Frank was referring to the mid-1960's	
12	Chevrolet Rodriguez drove, which Frank felt looked	
13	like the type of car the Burbank Police Department	
14	often sees driven by street racers. Frank did not	
15	make this comment for any reason related to	
16	Rodriguez's ethnicity or national origin.	
17	Supporting Evidence: Declaration of Kelly	
18	Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-	
19	20.	·
20	296. (Repeat of UF 84, above.) Rodriguez never	
21	asked Frank what he had meant by this comment.	
22	Supporting Evidence: Rodriguez Depo.,	· •
23	314:10-12.	
24	297. (Repeat of UF 85, above.) In early 2009,	
25	Rodriguez observed some quotations written on a	
26	dry erase board in the Detective Bureau, which	En la Contraction de la Contra
27	Rodriguez was told were taken from what a witness	
28		/.
		·

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	had said during an interview.	
3	Supporting Evidence: Rodriguez Depo.,	
4	202:11-21, 289:13-20, 204:18-205:6, and Exhibit	
5	146 to Rodriguez Depo.	
6	298. (Repeat of UF 86, above.) The phrases on	
7	the dry erase board were as follows:	
8	"My friend100 percent."	
.9	"I tell you everything100 percent."	
10	"Sir, please, I beg you."	
11	"Swear to God not 100 percent but 1000 percent."	
12	"Burbank police: Sir, what happened? Tell me.	
13	What do you know? Well what do you know?."	
14	Supporting Evidence: Rodriguez Depo.,	
15	294:16-295:15 and Exhibit 146 to Rodriguez Depo.	
16	299. (Repeat of UF 87, above.) Rodriguez	
17	considered these phrases to be referring to	
18	Armenians because of the use of the phrase "100	
19	percent,"	
20	Supporting Evidence: Rodriguez Depo.,	
21	289:21-290:24.	
22	300. (Repeat of UF 88, above.) Rodriguez	. ===
23 -	considered the use of this phrase "100 percent"	
24	disrespectful or demeaning to Armenians.	
25	Supporting Evidence: Rodriguez Depo.,	
26	290:22-292-11.	
27	301. (Repeat of UF 89, above.) Rodriguez has	
28		
	106	
	PLAINTIFF'S SEPARATE STATEMENT OF D	DISPUTED FACTS IN OPPOSITION

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	heard Armenians (including Armenian officers in the	
. 3	BPD) use the words "100 percent."	
4	Supporting Evidence: Rodriguez Depo.,	
5.	290:22-292:25.	
6	302. (Repeat of UF 90, above.) Rodriguez's co-	
7	plaintiff Steve Karagiosian (who is Armenian) also	
8	observed the quotations written on the dry erase	
9	board and discussed the quotations with Lieutenant	
10	Armen Dermenjian in Rodriguez's presence.	
11	Supporting Evidence: Rodriguez Depo.,	
12	209:1-24; FAC ¶ 3.	
13	303. (Repeat of UF 91, above.) During that	
14	conversation, Rodriguez told Dermenjian that he also	·
15	felt the comments on the board were "inappropriate."	
16	Rodriguez does not recall saying anything else on	
17	the subject. Rodriguez did not make any other report	
18	of the incident because Karagiosian already had.	
19	Supporting Evidence: Rodriguez Depo.,	
20	214:16-23, 215:6-17.	
21	304. (Repeat of UF 92, above.) Rodriguez	
22	testified that the only people he believed deserved	* 52.4
23	discipline for any harassing, discriminatory or	
24	retaliatory conduct were Kendrick, Cutler, Frank,	
25	and whoever wrote the remarks on the dry erase	
26	board.	,
27	Supporting Evidence: Rodriguez Depo.,	
28		

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE	
2	282:18-284:11.	AND SOLI OKTING EVIDENCE	
,3	305. (Repeat of UF 93, above.) Rodriguez		
4	discussed some of the comments he heard with his		
5.	co-plaintiff Omar Rodriguez but he ceased having		
6	any such conversations in early 2008 because, in his		
7	words, "my career had moved on and I had kind of		
8	gotten away from Officer Cutler and Officer		
9	Kendrick, and I was just kind of away on my own."		
10	Supporting Evidence: Rodriguez Depo.,		
11	314:13-315:22, 357:5-19.		
12	306. (Repeat of UF 94, above.) Rodriguez did not		
13	discuss these matters with Omar Rodriguez for the		
14	purpose of reporting them. He did not want them		
15	reported. Instead, he told Omar Rodriguez about the		
16	comments because he trusted Omar Rodriguez not to		
17	repeat them to anyone else.		
18	Supporting Evidence: Rodriguez Depo.,		
19	376:5-11.		
20	ů,		
21	Issue No. 31: Burbank is entitled to summary adjudic	ation as to the entire Fifth Cause of Action	
22	for failure to prevent discrimination, retaliation and ha	rassment in violation of the FEHA, as set	
23	forth in the FAC, because Burbank is entitled to summary adjudication as to each of the claims		
24	included and subsumed therein, for the reasons stated in Issues 21 through 30, <i>infra</i> .		
25			
26	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE	
27	FACTS AND SUPPORTING EVIDENCE 307. (Repeat of UF 57, above.) Rodriguez	AND SUPPORTING EVIDENCE	
28			
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. 1		
1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	identifies the three decisions described above (that	TAIL GOLL CHAING DILIDHION
3	is, his transfer from an SED assignment to an	
4	assignment in Patrol, the fact that he was not the first	· 22
5	officer selected for a position on the SWAT Team,	
6	and Burbank's failure to choose him for a temporary	•
7	assignment training another officer) as the only three	
8	reasons he was dissatisfied with his employment.	
9	Supporting Evidence: Rodriguez Depo.,	
10	26:1-14.	
11	308. (Repeat of UF 58, above.) Rodriguez is	
12	currently employed by the BPD.	
13	Supporting Evidence: Lowers Decl. ¶ 3,	
14	1:12-13; FAC ¶ 4	
15	309. (Repeat of UF 59, above.) Rodriguez has not	
16	been disciplined during his employment with the	
17	BPD.	
18	Supporting Evidence: Rodriguez Depo.,	
19	442:22-23.	
20	310. (Repeat of UF 60, above.) Rodriguez has not	(
21	been denied a promotion during his employment	
22	with the BPD.	
23	Supporting Evidence: Rodriguez Depo.,	
24	17:15-20.	
25	311. (Repeat of UF 61, above.) Each of the	3 3
26	performance evaluations Rodriguez has been given	
27	during his employment with the BPD reflected the	
28		
	109 PLAINTIFF'S SEPARATE STATEMENT OF D	

1.		
- 1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	fact that he had been performing his job in an above-	AND SOLLOWING EVIDENCE
3	satisfactory or better manner.	
4	Supporting Evidence: Rodriguez Depo., 333:	
5 ,	18-25.	
6.	312. (Repeat of UF 62, above.) Rodriguez sought	
7	four special assignments and got all of them: Field	
. 8	Training Officer, Special Enforcement Detail,	
9	Special Response (or SWAT) Team, and U.S.	
10	Marshall's Task Force.	
11	Supporting Evidence: Rodriguez Depo.,	
12	18:24-19:2, 25:4-16, 28:15-17, 143:16-23, and	
13	449:9-20.	
14	313. (Repeat of UF 63, above.) Rodriguez does	
15	not know of any white officer in the BPD who has a	
16	better track record than Rodriguez himself in getting	
17	every assignment and duty they requested.	
18	Supporting Evidence: Rodriguez Depo.,	
19	472:13-18.	
20	314. Burbank incorporates by reference	Plaintiff incorporates his responses to
21	Undisputed Material Fact Nos. 190 through 306	Facts Nos. 190 through 306 herein.
22	above.	į .
23		
24	SIXTH CAUSE OF	ACTION
25	(Violation of Public Safety Officers Procedural Bill	of Rights ("POBRA")/Government Code
26	Section 3300 e	t seq.)
27	C^{*}	
		,
28		

1	Issue No. 32: There is no triable issue as to any material fact and Burbank is entitled to judgment		
2	as a matter of law on the Sixth Cause of Action for violation of POBRA because POBRA does not		
3	create an alternate remedy for FEHA claims, and there is no remedy under POBRA for any		
4	discrimination, harassment or retaliation, as alleged in the FAC.		
5			
6	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE	
7	This issue raises a question of pure law. There are	Disputed. As Plaintiff's Opposition states,	
8	no undisputed material facts necessary to support	the BPD has committed additional	
9	this Issue.	violations of POBRA since the filing of	
.10		the FAC. As such, Defendant's motion	
11		should be treated as a motion for Judgment	
12	· .	on the Pleadings and Plaintiff should,	
13		· .	
14		under California law, be permitted to	
15		amend his complaint. See section IX of	
16		Plaintiff's Opposition.	
17			
18	Issue No. 33: There is no triable issue as to any mater	ial fact and Burbank is entitled to judgment	
19	as a matter of law on the Sixth Cause of Action for vio	plation of POBRA for the same reasons it is	
20	entitled judgment as a matter of law on Rodriguez's FEHA causes of action (see Issues 1 through		
21	9, 164through 11, 12 through 20, 21 through 31, infra)		
22		Sag.	
23	MOVING PARTY'S UNDISPUTED MATERIAL	OPPOSING PARTY'S RESPONSE	
24	FACTS AND SUPPORTING EVIDENCE 315. Burbank incorporates by reference	AND SUPPORTING EVIDENCE Plaintiff incorporates his responses to	
25	Undisputed Material Fact Nos. 1 through 314, above.		
26	Champaca Material Lact 1905. 1 anough 514, a00 ve.	Facts Nos. 1 through 314 above.	
27			

. 1	<u>Issue No. 34</u> : There is no triable issue as to any material fact and Burbank is entitled to judgment			
2	as a matter of law on the Sixth Cause of Action for violation of POBRA because all relevant			
3	provisions of POBRA deal specifically with the imposition of discipline or the denial of			
4	promotions, and Rodriguez was never disciplined nor denied a promotion.			
5				
6	MOVING PARTY'S UNDISPUTED MATERIAL OPPOSING PARTY'S RESPONSE FACTS AND SUPPORTING EVIDENCE AND SUPPORTING EVIDENCE			
7	316. (Repeat of UF 59, above.) Rodriguez has not			
8	been disciplined during his employment with the			
9	BPD.			
10	Supporting Evidence: Rodriguez Depo.,			
11	442:22-23.			
12	317. (Repeat of UF 60, above.) Rodriguez has not			
13	been denied a promotion during his employment			
14	with the BPD.			
15	Supporting Evidence: Rodriguez Depo.,			
16	17:15-20.			
17				
18				
19	Issue No. 35: There is no triable issue as to any material fact and Burbank is entitled to judgment			
20	as a matter of law on the Sixth Cause of Action for violation of POBRA because Rodriguez failed			
21	to file a claim alleging any POBRA violation under the Government Claims Act, and his failure to			
22	so file bars him from filing a lawsuit for POBRA violations against Burbank.			
23				
24	MOVING PARTY'S UNDISPUTED MATERIAL OPPOSING PARTY'S RESPONSE			
25	FACTS AND SUPPORTING EVIDENCE AND SUPPORTING EVIDENCE 318. Rodriguez filed his Government Claim with Undisputed.			
26	the City on May 27, 2009.			
27	Supporting Evidence: FAC 67¶, Exhibit H			
. 28				
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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING E			PARTY'S REPORTING EV		·.
thereto.	YIDDIYOD	7 II VD DOLL	ORTHOLI	<u>DD110D</u>	
319. Rodriguez's Government Clair	im form makes	Undisputed. Bu	ut as Plaintiff's		
no mention of any claim under POBR	RA.	 Memorandum o	of Points and A	uthorities	1
Supporting Evidence: FAC 67	7¶, Exhibit H	articulates since	•		
thereto.	•	.,	,		
		First Amended	- · · · · · · · · · · · · · · · · · · ·		,
		committed addi	itional further	POBRA	
		violations again	nst Plaintiff. S	ee Section	
		VII of Plaintiff	's Memorandu	m of Poin	:S
	•	and Authorities	s. As such, this	s court sho	uld
		properly treat I		•	
	•	for judgment or	n the pleadings	and grant	
		Plaintiff the rig	ht to amend hi	s complair	ıt.
		See footnotes of	of Plaintiff's M	lemora n du	m
	•	of Points and A	Authorities.		
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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

ISSUE NO. 1

WHETHER DEFENDANT CITY OF BURBANK VIOLATED THE FAIR EMPLOYMENT AND HOUSING ACT.

9	ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
10	321. The Burbank Police Department is	O. Rodriguez Decl. ¶10, 3:8-11; ¶¶ 3-7,
11	organized into four divisions, in order of prestige and	2:2-23.
12	importance: (1) Administrative, (2) Investigation; (3)	
13	operations, and (4) Patrol.	
14	322. When an applicant is hired following	O. Rodriguez Decl. ¶13, 4:2-8.
15	academy training, or laterals in as an officer from	
16	another enforcement agency, he or she is placed in	
17	the Patrol Division as a regular patrol officer.	
18	323. Patrol officers work a "beat," that is, they	O. Rodriguez Decl. ¶13, 4:2-8; ¶28, 6:27-
19	patrol a specific geographic area, usually in a police	7:1.
20	car.	
21	324. The probationary period for a new officer is	O. Rodriguez Decl. ¶10, 3:8-11; ¶¶ 3-7,
22,	one year. During the first six months, the patrol	2:2-23.
23	officer is assigned to three Field Training Officers	
24	("FTO"). The patrol officer partners with and works	
25	under the guidance of each of the three FTOs for a	
26	two month period. At the end of the first six months,	
27	if all three FTOs determine that the rookie patrol	
28	officer is ready, the officer will be assigned a car,	
		·

• •		
1	and will complete the year-long probation on his	
2	own beat.	
3	325. After passing the one-year probationary	O. Rodriguez Decl. ¶13, 4:1-8.
4	period, the officer attains civil service status and can	
5	only be terminated for cause and is entitled to certain	
6	due process rights.	
7	326. The patrol officer's only real exposure to	O. Rodriguez Decl. ¶28, 6:27; 7:1.
8	management is with his or her Patrol sergeant, and	
9	other Patrol Division managers at the beginning and	
10	end of the shift. They receive their field instructions	
11	from Dispatch, and beat work is considered routine	
12	when compared to other specialized units.	
13	327. Some assignments are more sought after and	O. Rodriguez Decl. ¶¶20-27, 5:9 - 6:26.
14	prestigious than others because they offer exposure	
15	to upper management (and, in some cases, other	
16	federal, state and county agencies) and the	
17	opportunity for broader experience and training.	
18	328. Field Training Officer. Assignment as an	Taylor Decl., ¶9, 4:17-18.
19	FTO is considered a very prestigious assignment and	
20	is an unofficial prerequisite to a promotion to	
21	sergeant or above.	
22	329. The competition for an FTO assignment is	O. Rodriguez Decl. ¶13-17, 4:1-21;
23	fierce and certain requisites must be met in order to	Taylor Decl., ¶10, 4:25-26.
24	be considered. First, the officer applicant must have	
25	at least two years experience as an officer with the	
26	Department.	
27	330. Second, the officer applicant must be	O. Rodriguez Decl. ¶13-17, 4:1-21;
28		
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ļ	recognized by senior officers and through annual	Taylor Decl., ¶10, 4:25-26.
	performance evaluations as an excellent officer.	
ŀ	331. Third, the officer applicant must submit a	O. Rodriguez Decl. ¶13-17, 4:1-21
	written memorandum of interest which sets forth the	
	officer's basic qualifications as well as any unique	
	skills or experience that the officer can contribute to	
	the training experience.	
	332. Fourth, the officer applicant must pass an	O. Rodriguez Decl. ¶13-17, 4:1-21;
	oral interview.	Taylor Decl., ¶10, 4:25-26.
	333. Despite numerous obstacles, Plaintiff, as well	E. Rodriguez Decl. ¶11, 3:18-22;
	as two other plaintiffs in this action - Omar	Karagiosian Decl., ¶32, 6:4-5.
	Rodriguez and Steve Karagiosian - managed to earn	- " -
	appointments as Field Training Officers.	
-	334. Special Response Team ("SRT"). Inclusion	E. Rodriguez Decl. ¶16-20, 4:14-25;
	on the Special Response Team ("SRT"), unlike other	O. Rodriguez Decl. ¶32-33, 7:13-25.
	assignments, is not full time. The SRT is Burbank's	" -,
	version of a "SWAT" team.	
	335. An officer in any assignment can be	E. Rodriguez Decl. ¶11, 3:18-22.
	simultaneously assigned to SRT.	
	336. Assignment to SRT is not a routine or	Dunn Decl. ¶2, 2:5-8.
	random of assignment. An officer must have special	
	qualifications in order to be assigned to SRT. An	
	officer must pass a marksmanship test as well as a	
	physical agility/obstacle test.	
-	337. The officer is ranked solely upon his or her	E. Rodriguez Decl. ¶16-20, 4: 16-28.
	performance on these two tests. The physical	
I	agility/obstacle course test is graded on a pass/fail	

	· · · · · · · · · · · · · · · · · · ·
basis. The firearm qualification test is graded in	
terms of the applicant's actual marksmanship score.	
338. The Department may also consider other	Dunn Decl. ¶4, 2:12-14.
experience if that experience is relevant to SRT	
duties. For example, an officer with specific SWAT	
experience on another agency's SWAT team is	
relevant. However, it is the exception, and not the	
rule, to select SRT officers based on previous	
experience.	
339. A former Marine's "expert marksman"	Dunn Decl. ¶5, 2:15-24.
qualification is irrelevant to selection to a SRT	
assignment since the actual scoring criteria is inferior	·
to criteria for the BPD's "distinguished expert"	
designation. All BPD SRT members must have a	
"distinguished expert" designation in marksmanship.	
340. Experience as a "custody deputy" on the Los	Dunn Decl. ¶6, 2:25-3:4.; O. Rodriguez
Angeles Sheriff's Department ("LASD")	Decl. ¶, p, line
Emergency Response Team ("ERT") is irrelevant to	
selection to a SRT assignment. All deputies who at	
some point are assigned to a jail are "custody	
deputies" and all are on the ERT. LASD ERT	
members receive no special training.	=-
341. In 2007, Plaintiff first applied for assignment	E. Rodriguez Depo., 112:18-115:5; E.
to SRT. Plaintiff passed his physical agility/obstacle	Rodriguez Decl. ¶¶17-20, 4:17-28.
course test, which is a pass/fail examination.	
342. In 2007, Plaintiff excelled on his firearm	E. Rodriguez Decl. ¶17, 4:17-20; O.
qualification/marksmanship test, outperforming	Rodriguez Decl. ¶54, 10:15-22.
	" "
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	terms of the applicant's actual marksmanship score. 338. The Department may also consider other experience if that experience is relevant to SRT duties. For example, an officer with specific SWAT experience on another agency's SWAT team is relevant. However, it is the exception, and not the rule, to select SRT officers based on previous experience. 339. A former Marine's "expert marksman" qualification is irrelevant to selection to a SRT assignment since the actual scoring criteria is inferior to criteria for the BPD's "distinguished expert" designation. All BPD SRT members must have a "distinguished expert" designation in marksmanship. 340. Experience as a "custody deputy" on the Los Angeles Sheriff's Department ("LASD") Emergency Response Team ("ERT") is irrelevant to selection to a SRT assignment. All deputies who at some point are assigned to a jail are "custody deputies" and all are on the ERT. LASD ERT members receive no special training. 341. In 2007, Plaintiff first applied for assignment to SRT. Plaintiff passed his physical agility/obstacle course test, which is a pass/fail examination. 342. In 2007, Plaintiff excelled on his firearm qualification/marksmanship test, outperforming

1	Officer Barcus.	
2	343. Despite Plaintiff being the stronger, more	E. Rodriguez Depo., 443:23-430:14; E.
3	qualified applicant, Officer Barcus, a Caucasian, was	Rodriguez Decl. ¶¶16-20, 4:14-28.
4	selected for assignment to SRT, and not Plaintiff.	
5	344. In 2008, Plaintiff applied a second time for	E. Rodriguez Depo., 443:23-430:14; E.
6	assignment to SRT. Plaintiff once again passed his	Rodriguez Decl. ¶¶16-20, 4:14-28.
7	physical agility/marksmanship test. This time,	
3 .	Plaintiff scored the best on the firearm	
•	qualification/marksmanship test, outperforming both	
)	Officers Turner and Cornils.	
L	345. Despite being the best qualified applicant for	E. Rodriguez Depo., 443:23-430:14; E.
2	selection to a SRT assignment, Plaintiff was once	Rodriguez Decl. ¶¶16-20, 4:14-28.
3	again passed over for a SRT assignment	
1	346. Conflicting reasons were given to Plaintiff as	E. Rodriguez Depo., 443:23-430:14; E.
5	to why he was passed over twice. He was told one	Rodriguez Decl. ¶¶16-20, 4:14-28.
5	time that he worked too much overtime on his full	
7	time assignment for consideration.	
3	347. The Department now claims that he was less	See Disputed Facts Nos. 342 and 343,
))	qualified than the other candidates. Such is not true.	supra.
	348. Special Enforcement Detail ("SED"). Of	E. Rodriguez Decl. ¶14, 4:4-8; O.
	all of the specialized assignments, e.g., bike patrol,	Rodriguez Decl. ¶¶20-22, 5:9-28.
	school resources officer, SRT, FTO, gang detail, the	Taylor Decl. ¶12, 5:14-15.
}	Special Enforcement Detail is the most prestigious	1 ay 101 2 co. 1 12, 3 11 1 13 1
ļ ;	and most sought after assignment.	
	349. SED is the oldest specialized detail in the	Taylor Decl., ¶12, 5:6-8;
5	Department – SED has been an active detail for the	O. Rodriguez Decl. ¶20, 5:9-11.
7	past thirty years.	

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· , 1	350. Among the most important reasons for this	Taylor Decl., ¶12, 5:14-21;
2	detail's prestige are the opportunities: (a) to obtain	O. Rodriguez Decl. ¶20-31, 5:9 7:11.
. 3	the necessary skills and knowledge to become a	
4	detective and/or promotion in departments other than	
5	patrol; (b) for exposure of one's skills and talents to	
, 6	multiple units and divisions within the department;	
7	and (c) career-enhancing exposure to and	
8	opportunities to participate in various federal, state	
9	and county law enforcement task forces sponsored	
10	by agencies, such as the DEA, ATF, ICE, FBI,	
11	DVM, Postal Inspectors, etc. BPD does not select	
12	the officers for assignment to these task forces. The	
13	task forces identify and select the officers that they	
14	want. Therefore exposure is critical, and this type of	
1.5	exposure is not available if an officer is assigned to	
16	patrol.	
17	351. The application process for selection to SED	Taylor Decl., ¶12, 5:14-21;.
18	is grueling. First, in order to apply, an officer must	
19	possess at least three years experience as a police	
20	officer, and at least two of those years must be with	
21	the BPD.	
22	352. The officer must submit a memorandum of	Taylor Decl., ¶12, 5:8-11.
23	interest which sets forth all of his qualifications,	
24	including unique qualifications such as foreign	
25	language skills, specialized law enforcement	
26	education, etc. The officer must also submit a	
27	resume.	Position 1
28	-	

353. There is an oral interview with three high	Taylor Decl., ¶12, 5:11-12; O. Rodriguez
ranking officers.	Decl. ¶22, 5:20-28.
354. Based on the aforementioned qualifications,	O. Rodriguez Decl. ¶5, 5:20-28.
submission and interview, the applicant is ranked. If	n ian
an applicant's rank is sufficiently high, the candidate	
may be assigned to the SED.	
355. SED is one of the few assignments with a	C. Verragiogien Deal. #22 4:12 22
	S. Karagiosian Decl., ¶22, 4:12-23.
fixed term: three years.	
356. Any officer who successfully completes a	Taylor Decl., ¶13, 5:22-24; O. Rodriguez
three year assignment with the SED is almost always	E. Rodriguez Decl. ¶14, 4:4-8.
guaranteed a promotion to the rank of Detective if	
that officer applies for such promotion.	
357. For the past twenty years, every officer who	Taylor Decl., ¶13, 5:22-24; O. Rodriguez
has successfully completed the SED assignment has	Decl. ¶27, 6:24-26.
been promoted to Detective. An officer who	Deci. 27, 0.24-20.
completes an SED assignment is considered "the	
best of the best."	
358. First, an SED officer performs detective work	Taylor Decl., ¶12, 5:15-17; O. Rodriguez
and works with detectives. An SED officer learns	Decl. ¶¶22-27, 5:9-6:26; E. Rodriguez
and applies the laws that relate to detective work. An	Decl. ¶¶13-15, 3:27-4:12.
SED officer develops law enforcement contacts and	.:
resources (frequently through coordination with	
various Task Force) outside the BPD which will be	
useful to him personally, and to the Detective Bureau	
in general.	
359. When Plaintiff joined the BPD in 2004, he	E. Rodriguez Decl. ¶4, 2:10-13.
was subjected to regular humiliating insults and	
	<u> </u>
121	

. '		
1	treatment by both his peers and by superior officers.	
2	He said nothing because he was on probation.	
3	360. Even after Plaintiff completed his probation,	E. Rodriguez Decl. ¶5, 2:14-18.
4	the insults continued. Plaintiff rarely complained	
5	because many of the perpetrators of this treatment	
6	were known social friends of the Chief and other	
7	high ranking officers, and retaliation would be a	
8	likely result.	
9	361. Starting in 2007, Plaintiff did complain to	E. Rodriguez Decl. ¶8, 3:3-7.
10	both Lt. Omar Rodriguez (another plaintiff in this	
11	action) and to Lt. Armen Dermenjian.	
12	362. One incident about which Plaintiff	Frank admits making the statement that
13	complained was the discriminating language	"you" look like the bad guys we chase.
14	employed by Sgt. Kelly Frank. Frank encountered	DF #82. Frank did not say "your car"
15	him in the police parking garage, confronted him,	looks like the bad guys we chase. Further,
16	and said, "You look like the guys we chase."	
17		Detective Frank said these words when
1.8		Plaintiff Rodriguez was outside of his car
19		and he referred directly to Plaintiff
20.		Rodriguez. As a result, a trier of fact
21		could find that Detective Frank was not
22	ari	referring to the car and was, in fact,
23		
24		referring to Elfego Rodriguez. See also E.
25		Rodriguez Decl., ¶¶6-7, 2:19-3:2.
26	363. Franks admits to making the statement	Frank admits making the statement that
27	referenced above to Plaintiff. Frank now belatedly	"you" look like the bad guys we chase.
28.	explains that he was referencing Plaintiff's vintage,	<u>į</u>
	122	

1	classic car, and not Plaintiff's personal appearance.	DF #82. Frank did not say "your car"
2	Franks admits that he used the word "you," and did	looks like the bad guys we chase. Further,
3	not say, "Your car looks like the ones we chase."	Detective Frank said these words when
4		Plaintiff Rodriguez was outside of his car
5:		and he referred directly to Plaintiff
6		
7		Rodriguez. As a result, a trier of fact
8		could find that Detective Frank was not
9		referring to the car and was, in fact,
10		referring to Elfego Rodriguez. See also E.
11		Rodriguez Decl., ¶¶6-7, 2:19-3:2.
12	364. At the time Frank made the statement,	E. Rodriguez Decl. ¶7, 2:23-3:2.
13	Plaintiff had not yet purchased the car that Frank	
14	referenced.	
15	365.	
16		
17	366. In March 2008, anonymous letters were sent	Disputed. The anonymous letter also
18	to the BPD union and various Burbank city officials.	complained about the BPD creating a
19	These letters complained about wide-spread racism	hostile work environment. See E.
20	within the BPD.	Rodriguez Depo., ¶234, 16-20. Stehr
21		' ·
22	r	Decl., ¶3, 4:12-15.
23	367. The Department hired an outside attorney to	E: Rodriguez Depo., ¶23, 8:1-8; 345:20-
24	audit the workplace. Out of approximately 165	346:7; Stehr Decl. ¶3, 4:12-15; ¶4, 4:17-
25	officers, the attorney interviewed 13 people in just	19.
26	one day.	
	368. Although Chief Stehr stated that the report	, 3 - 2
2728	that issued as a result of the investigation indicated	
_,5	400	
	DI AINTIEE'S SEDADATE STATEMENT OF D	ISDITTED EACTS IN ODDOSTEION

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1	numerous and widespread instances of	
2	discrimination, he planned to investigate only two	
; 3	incidents.	
4	369. On November 8, 2008, in front of	O. Rodriguez Decl. ¶¶47-48, 9:22-10:5.
. 5	approximately 25 BPD managers, Chief Stehr said "I	
6	remember a time when it was okay to use the words	
7	"nigger" around here. Chief Stehr approached Lt.	
8	Omar Rodriguez and asked what he thought about	
9	the incident in which he stated that it was once okay	
10	to use the word "nigger." When Lt. Rodriguez said	
11	that the word was offensive, Chief Stehr said, "Fuck	
12	me!" and walked out of the room.	
13	370. Within a few hours, most BPD officers,	E. Rodriguez Decl. ¶9, 3:18-25; O.
14	including Plaintiff, became aware that the Chief of	Rodriguez Decl. ¶¶49-50, 10:5; 11:12
15	Police – the highest decision maker in the	
16	Department – had made the statement and was	
17	unapologetic.	·
18	371. Plaintiff, as well as other officers were aware	E. Rodriguez Decl. ¶9, 3:18-25;
19	of Chief Stehr's comment, and it shook the	Karagiosian Decl., ¶15, 3:22-23; O.
20	confidence of most of the minority and female	Rodriguez Decl. ¶¶47-50, 9:22-10:9.
21	officers, including Plaintiff. The "zero tolerance of	
22	discrimination" policies appeared to be meaningless.	
23	372. Chief Stehr Admitted He Planned to	O. Rodriguez Decl. ¶8, 2:24-28; ¶54,
24	Retaliate Against Plaintiff. Lt. Omar Rodriguez	10:12-19.
25 ·	was told by Chief Stehr that he was tired of	
. 26	Plaintiff's complaints about racism within the	
27	Department.	
28		

373.	
374. After Plaintiff had been passed over for a	O. Rodriguez Decl. ¶54, 10:12-19.
position with SRT, he complained to Lt. Omar	
Rodriguez that he had been passed over because of	
discrimination.	
375. Lt. Omar Rodriguez took Plaintiff's	O. Rodriguez Decl. ¶54, 10:12-19.
complaint that he had been passed over for SRT	
because of discrimination to Chief Stehr. Chief	
Stehr, upon learning that Plaintiff had complained	
stated that he was "tired of hearing Plaintiff's	
complaints" and that if he heard anymore, he would	
make sure that Plaintiff's career in BPD would go	
nowhere.	
376. Plaintiff Continued to Complain About the	E. Rodriguez Decl. ¶33, 7:2-5;
Hostile Work Environment. In April 2009,	Karagiosian Decl., 4:22-27.
Plaintiff and his fellow SED officer, Steve	Karagiosian Deer., 4.22-27.
Karagiosian began hearing unpleasant and	
derogatory rumors about SED and about plans to	
disband the unit. Concerned, Plaintiff and	
Karagiosian approached Lt. Armen Dermenjian, who	
was in the chain of command over the SED.	
3	E D. L D. 1 #22 7.22
377. Dermenjian assured Plaintiff and Karagosian	E. Rodriguez Decl. ¶33, 7:2-3;
that there were no plans to disband SED, that they	E. Rodriguez Decl. ¶38, 8:1-2;
were good officers, and that, in the unlikely event	Karagiosian Decl., ¶23, 4:24-27.
that the unit was disbanded, they would be	
reassigned to other specialized units.	
378. Plaintiff Complained About Racist	E. Rodriguez Decl. ¶25, 5:18-24;

	Comments Displayed on White Board. In April,	Karagiosian Decl., 3:8-13.
	2009, Plaintiff noticed a white board in the hallway	
	outside the Detective Bureau. The white board had a	
	list of unique idioms that are frequently used by	
	Armenians. However, the idioms had no substantive	
	context. The list consisted of phrases such as, "My	
	friend," " 100%," "I tell you everything	
	100%," and "Sir, please, I beg you."	
	379. The phrases were not derogatory per se, but	E. Rodriguez Decl. ¶25, 5:18-24;
	there was no substantive context to these phrases.	Karagiosian Decl., 3:14-18.
	The phrases bore no relationship to a list of clues, or	
	checklists, or relationships between witnesses,	
	evidence, or any other matter that would be of	
	legitimate concern in a criminal investigation.	
	380. Plaintiff was shocked and offended by the	E. Rodriguez Decl. ¶28, 6:6-12;
,	comments on the white board. Plaintiff showed the	Karagiosian Decl., ¶15, 3:18-23.
•	white board with the offending phrases to	
	Karagiosian. Both Plaintiff and Karagosian were	
	incensed because there was no legitimate reason to	
	list these idioms. The list of idioms were intended to	
	ridicule and mock Armenians.	
	381. The white board had been left in a hallway	E. Rodriguez Decl. ¶27, 6:1-5;
. 1	visible to all – including BPD management–	Karagiosian Decl., ¶19, 4:13-15.
	oblivious to the insulting impact it would inevitably	
	have on the officers, witnesses, and suspects who	
	saw it.	
	382. Plaintiff and Karagiosian agreed that they	E. Rodriguez Decl. ¶30, 6:17-20;

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1	needed to bring the incident to the attention of their	Karagiosian Decl., ¶16, 3:24-25.
2	supervisor. Karagiosian said he would take their	
3	complaint to Lt. Dermenjian.	
4	383. Dermenjian later visited the SED office and	E. Rodriguez Decl. ¶32, 6:26-28; ¶30,
5	told Plaintiff and Karagiosian that they were foolish	6:18-20.
6	to complain and that it would damage their careers.	
. 7	Dermenjian told Plaintiff and Karagiosian that	
8	discrimination had been going on for years at BPD,	
9	that it will continue and that nothing can be done	
10	about it because you can not changed officers'	
11	beliefs. Dermenjian told Plaintiff and Karagiosian	
12	that he was concerned about Chief Stehr how would	
13	react if he heard yet another complaint about	
14	discrimination from them, but said he would relay	
15	their concerns to the Chief.	
16	384. A few days later, Dermenjian returned and	E. Rodriguez Depo., p. 201:3-210:6; E.
17	reported to Plaintiff and Karagiosian that the Chief	Rodriguez Decl. ¶29, 4:13-16; ¶31, 6:21-
18	said the comments related to a murder in which the	25; Karagiosian Decl., ¶18, 4:5-12.
19	victim, witnesses and probably the murderer were	,g
20	Armenian. There would be no further investigation	
21	into the relevance of the writings to the murder), the
22	investigation or to determine the identity of the	
23	writer or writers.	
24	385. In April, 2009 Karagiosian told Plaintiff that	E. Rodriguez Depo., 416:18-417:25; E.
25	he had also heard a detective refer to a female	Rodriguez Decl. ¶29, 4:13-16; Karagiosian
26	Armenian murder victim as "not human."	Decl., ¶16, 3:24-27; Karagiosian Depo.,
27		
28		542:1-543:10; 569:17-570:10.
	·	

1	386. Plaintiff later learned that the Detective who	Karagiosian Depo., 100:23-101:16.
2	had written the offending comments received the	
3	lowest form of written discipline under BPD policies	
4	- an entry was made on a comment card.	
× 5	387. The Disbanding of SED. In early May	E. Rodriguez Depo., 230:225-231:15; E.
6.	2009, Chief Stehr announced that he intended to	Rodriguez Decl. ¶34, 7:6-10; E. Rodriguez
7	disband the SED and send Plaintiff and Karagosian	Decl., Exh. A and B.
8	back to Patrol.	
9 .	388. Plaintiff was informed in writing by Captain	E. Rodriguez Decl., Exh., A.
10	Lowers that the disbanding of SED "had nothing to	
11	do with [his] work performance" in SED and that she	
12	"was happy to have [him] working for [her]."	
13	389. The third member of the SED team, Sgt.	S. Karagiosian Decl., ¶30, 5:27-28.
14	Travis Irving, a Caucasian who did not complain	
15	about discrimination, was elevated to Adjutant to	
16	Chief Stehr.	
17	390. Chief Stehr announced a new unit which	E. Rodriguez Decl. ¶37, 7:20-26;
18	would perform a similar function to the SED the	Taylor Decl., ¶17, 6:12-17.
19	"SPU,"and invited "other" officers to apply.	
20	391. When Plaintiff and Karagiosian applied to be	E. Rodriguez Decl. ¶38, 8:2-4.
21	assigned to this new unit, the Chief announced that	
22	he no longer intended to create the new specialized	man ut.
23	unit.	
24	392. Plaintiff and Karagiosian requested that they	Karagiosian Depo., 15:15-21:25; E.
25	be assigned to the Monday, Tuesday and Wednesday	Rodriguez Decl. ¶40, 8:8-10.
26	shift in Patrol. Instead, they were assigned to the	
27	Thursday, Friday and Saturday shift.	
28		
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1	393. The Thursday, Friday and Saturday shift is	Karagiosian Depo., 15:15-21:25; E.
2	considered to be the worst shift available within	Rodriguez Decl. ¶40, 8:8-10.
. 3	Patrol. The officers who are normally assigned to	
4	such are rookies and officers without any seniority.	
5	Plaintiff and Karagiosian believed that they were	1
6	assigned to this shift as a punitive action.	
7	394. Throughout his tenure as Deputy Chief,	Taylor Decl., ¶7, 4:8-11; ¶14, 5:14, 6:4;
8	Taylor was consistently involved in any discussions	¶18, 6:18-19.
9	concerning major changes in Department	
10	organization and reorganization.	
11	395. One of the only occasions in which Chief	Taylor Decl., ¶14, 5:14-6:4.
12	Stehr did not include Taylor was in discussions	·
13	about the future of SED. When Taylor learned about	
14	the pending change, the decision had already been	
15	made.	
16	396. Taylor was an active participant and provided	Taylor Decl., ¶8, 4:12-13; ¶14, 5:14-6:4;
17	input to all discussions concerning the overall	¶15, 6:5-9; ¶16, 6:10-11; E. Rodriguez
18	budget, as well as the budgets for divisions, bureaus,	Decl., Exh. A.
19	units and details. The SED budgetary issues were	
20	resolved prior to Plaintiff being assigned to SED.	
21	When Chief Stehr informally told Taylor that SED	
22	would be disbanded, he never cited budgetary	- T
23	concerns. Captain Janice Lowers did not raise any	·
24	budgetary concerns about SED. Instead, her	
25	complaint was that the two police officers in SED	
26	and most of the patrol officers who work with SED	
27	"act like jerks."	
28		

1	397. Temporary FTO Position. Plaintiff applied	E. Rodriguez Decl. ¶42, 8:13-20.
2	for an assignment as a temporary training officer	
3	while the regular FTO was on vacation during the	
4	period from June 27 through July 4, 2009.	<i>i</i> .
· 5	398. Plaintiff had previously served as a FTO for	E. Rodriguez Decl. ¶11, 3:13-20.
6	nearly two years and had an exemplary track record	
7	as a FTO.	
8	399. The two officers who were selected for this	E. Rodriguez Decl. ¶42, 8:13-20.
9	temporary assignment lacked the minimal two years	
10	experience as a police officer required to be a FTO.	
11	The assignment was announced over the dispatch to	
12	everyone. Even the two rookies who were selected	
13	apologized to Plaintiff and told him their selection	
14	was unfair and wrong.	
15	400. Plaintiff had been a FTO to one of the	E. Rodriguez Decl. ¶42, 8:13-20.
16	officers selected for the FTO temporary assignment.	
17	His partner, Steve Karagiosian had been the FTO to	
18	the other officer selected.	
19	401. In Retaliation, the Department Seeks to	E. Rodriguez Depo., p, lines
20	Terminate Plaintiff. BPD conducted two	E. Rodriguez Decl. ¶, p, line
21	investigations concerning allegations of excessive	
22	use of force in conjunction with the armed robbery	
23	of Porto's Bakery, a local bakery/restaurant.	, TTF
24	402. In both of these previous investigations,	E. Rodriguez Depo., p, lines
25	Plaintiff was only interviewed, but to his knowledge,	E. Rodriguez Decl. ¶43, 8:22-24.
26	not investigated.	D. Routiguez Dooi. 15, 6.22-24.
27	403. After the disbanding of SED, in September	E. Rodriguez Decl. ¶43, 8:22-24
28	There are arrowing or one, in september	10, 0.22 21

1	2009, the Department launched yet a third	
2	investigation into the same incident. This time,	
3	based upon the testimony of a single officer, a	<i>į</i> .
4	known racist, Plaintiff was suddenly a target of	
5.	investigation.	
6	404. On March 25, 2010, Plaintiff was placed on	E. Rodriguez Decl. ¶44, 8:25-28.
.7	administrative leave.	
8	405. On March 30, 2010, Plaintiff was provided	E. Rodriguez Depo., p, lines;
9	with a Proposed Notice of Termination.	E. Rodriguez Decl. ¶44, 8:25-28.
10	406. Inappropriate Race-based comments	Slor Deposition, 21:12-18; Slor
11		
12	within the BPD. Inappropriate race-based	Deposition, 25:13-18; Deposition of
13	comments about Blacks, Armenians, Hispanics and	Anthony Valento Deposition ("Valento
14	others were made by police officers on duty at the	Depo.") (Attached to Thompson Decl. as
	Burbank Police Department, as late as the three	
15	months between September, 2009 to November,	Exhibit "F"), 54: 23-55:7; Valento
16	2009.	Deposition, 55:9-15; Valento Deposition,
17		55:17-21; Omar Rodriguez Deposition,
18		("O. Rodriguez Depo.") (Attached to
19		Thompson Decl. as Exhibit "G") 352:7-11.
20	407. Officer Kerry Schilf's nickname in the	Slor Deposition, Page 26, Lines 16 through
21		Sior Deposition, Fage 20, Lines to through
22	Burbank Police Department is "HITLER."	18.
23	408. Many race-based "jokes" at the Burbank	Deposition of Dannel Arnold ("Arnold
24	Police Department were made at roll call, in front of	Depo.")(Attached to Thompson Decl. as
25	numerous other officers and supervisors.	Exhibit "H"), 51:8-18.
26		LAMOR II 3, 31.0-10.
27	409. Officer, Jamal Childs complained to Officer	Karagiosian Deposition, 170:2-6.
28	Karagiosian of offensive race based comments made	
_•	101	. ;
	131	

1	in front of "high ranking officials in our Department,	
2	and they think it's funny."	
3	410. Omar Rodriguez complained to Lieutenant	Deposition of John Murphy ("Murphy
4	Murphy about race-based discriminatory statements	Depo.")(Attached to the Thompson Decl.
5	made on a "grease board."	as Exhibit "I"), 62:3-63:4.
6	411. Burbank Police Officers told jokes about	Arnold Deposition, 49:25-50:3; Deposition
8	those of Mexican-Armenian heritage.	of Angelo Dahlia ("Dahlia
9		Deposition")(Attached to Thompson Decl.
10		as Exhibit "J"), 129:6-17; Murphy
11		Deposition, 82:13-20; Arnold Deposition,
12		59:15-18. Omar Rodriguez Deposition,
13		369:10-17. Omar Rodriguez Deposition,
14		374:23-375:2.
15	412. As a Burbank Police Officer, Dan Arnold	Arnold Deposition, 36:19-24.
16	was "uncomfortable because of racial remarks,	Tamora Boposidon, Soris 211
17	attitudes towards different races, constant barrage of	
18 19	racial humor (and) the lack of integrity"	
20	413. Race and Bias Issues within the BPD.	Arnold Deposition, 75:6-76:1.
21	Minorities were treated differently than Caucasians	
22	based on race by Burbank Police Officers. If you	: ****
23	were a white male, "the chance of talking to you	
24	were slim to none. If you were a minority walking	
25	through the City at night, you were getting talked to	
26	every time."	
27	414. There is a huge bias against minorities in the	Arnold Deposition, 75:5-76:1.
28	City of Burbank.	
	132	
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1	415. Detective Dahlia testified that inappropriate	Dahlia Deposition, 140:23-141:9.
2	race based language has never been acceptable, but	
3	all Burbank Police Officers he knows have been	
4	guilty of it during the past twenty years.	
5.	416. Detective Dahlia admits to using the	Dahlia Deposition, 140:23-141:25
6	language described in his Deposition (between	(December 22, 2008 to December 22,
7	December 22, 2008 and December 22, 2009) while	2009); Dahlia Deposition, 146:11-147:4
8	on duty as a police officer "as just about everybody	(past twenty years).
. 9	else on the Police Department" but "its not used in a	(past twonty years).
10	manner of- to discriminate that person directly."	
11	417. Detective Dahlia has heard these terms used	Dahlia Deposition, 147: 22-148:7.
12	by the majority of the people in the Department	
13	during the past tenty years "and that's the honest	,
14	truth, whether you accept it or not, they are not used	
15	in the context of personally attacking a person."	
16	"It's a ugly business that we do. It's a stress relief	
17	sometimes. Is it right? No it's not. Absolutely not.	
18	But I have used those words and so have other	
19	people."	
, 20	418. Former Mayor of the City of Burbank,	Deposition of Former Mayor of the City of
21	Marsha Ramos, whose tenure ended in April 30,	Burbank, Marsha Ramos, Page 12, Lines 2
22	2009, had knowledge of racial issues and bias within	through 5 and Page 15, Lines 13 through
23	the Burbank Police Department during her tenure.	
24		19 attached to Thompson Decl. as Exhibit
25		"L"
26	419. Anonymous Letter of Complaint. In the	Deposition of Former Mayor of the City of
27	Fall, 2008, an anonymous letter was sent to the	Burbank, Marsha Ramos, Page 16, Line 23
28	Burbank City Counsel describing problems of racism	
	133	<u> </u>
	PLAINTIFF'S SEPARATE STATEMENT OF D	ISPUTED FACTS IN OPPOSITION

1	and retaliation within the Burbank Police	through Page 17, Lines 6.
2	Department.	
3	420. The City Attorney's office advised the City	Deposition of Former Mayor of the City of
4	Counsel not to discuss or otherwise pursue any	Burbank, Marsha Ramos, Page 17, Line 20
5.	matters listed in the anonymous letter, for fear of	through Page 18, Line 5; Deposition of
6	liability. The anonymous letter contained allegations	Former Mayor of the City of Burbank,
7	of discrimination and inappropriate treatment of	
8	police officers. There were also references to	Marsha Ramos, Page 20, Lines 14 through
9	inappropriate behavior of supervisors and	24.
10	commanding officers within the Department that	
11	went unreported. Certain Burbank Police Officers	
12	were "cited as using racial epithets."	
13	421. Prior to her leaving office, then Mayor	Deposition of Former Mayor of the City of
14	Marsha Ramos told City Manager, Mike Flad that if	Burbank, Marsha Ramos, Page 32, Line 16
15	matters were not resolved within the Police	through Page 33, Line 11.
16	Department soon, "the Department will probably fall	
17	apart."	
18	422. There's a culture within the City of Burbank,	Deposition of Former Mayor of the City of
19	for all Burbank employees called the "code." Within	Burbank, Marsha Ramos, Page 43, Line 2
20	the code you never say it out loud "is it because	through Page 44, Line 3.
21	you're Black?" "You don't say that out loud, you	
22	just don't."	
23	423. Marsha Ramos, during her tenure as Burbank	Deposition of Former Mayor of the City of
24	Mayor, was also aware of issues of sexual	Burbank, Marsha Ramos, Page 59, Line 21
25	harassment and gender-bias within the Burbank	through Page 60, Line 11; Page 60, Line
26	Police Department.	24 through Page 61, Line 1; Page 61, Lines
27		
28	· .	5 through 11.
	134	

1	424. Nayari Nahabedian was hired by the City of	Deposition of Nayiri Nahabedian
2	Burbank to provide diversity training to the Burbank	Deposition, Page 16, Lines 2 through 23;
3	Police Department and its Officers	attached to Thompson Decl. as Exhibit
4		"K".
5		
6	425. Ms. Nahabedian, a human resources trainer,	Nahabedian Deposition, Page 19, Line 24
7	was informed when she arrived at the Burbank	through Page 20, Line 13.
8 .	Police Department that there existed issues of	
9	discrimination and harassment.	
10	426. At the time Ms. Nahabedian was hired, she	Nahabedian Deposition, Page 20, Lines 15
11	was informed that there were investigations into	through 21.
12	"race-based issues" in the Department.	
13	427. Ms. Nahabedian had been informed of	Nahabedian Deposition, Page 37, Lines 21
14	investigations in the Burbank Police Department	through 24.
15	based upon race, ethnicity and gender.	
16	428. Ms. Nahabedian informed then Chief Tim	Nahabedian Deposition, Page 59, Line 22
17	Stehr that she believed that the Burbank Police	through Page 60, Line 3.
18	Department had a problem with its attitudes towards	
19	separate races.	
20	429. Comments made to Ms. Nahabedian during	Nahabedian Deposition, Page 62, Lines 1
21	the training she performed led her to believe that	through 12.
22	racial intolerance was occurring within the Burbank	
23	Police Department.	
24	430. At least one Burbank Police Officer told Ms.	Nahabedian Deposition, Page 64, Line 20
25	Nahabedian that they were afraid to speak out of the	through Page 65, Line 1.
26	problems within the Burbank Police Department.	
27	431. Detective Dahlia "did not think very highly"	Dahlia Deposition, Page 148, lines 9
28	of the diversity training provided by Nayari	
	135	
	PLAINTIFF'S SEPARATE STATEMENT OF D	ISPLITED FACTS IN OPPOSITION

1	Nahabedian.	through 22.
2	432. Detective Dahlia thought that the diversity	Dahlia Deposition, Page 149, lines 1
3	training provided by Nayari Nahabedian was simply	through 8.
4	"damage control."	*
5	433. Nahabedian informed then Chief Stehr that	Nahabedian Deposition, Page 16, Line 24
6	one four-hour training was unlikely to solve the	through Page 17, Line 14.
7 ·	Department's problems.	
8	434. At the time she was hired, then Chief Stehr	Nahabedian Deposition, Page 25, Lines 7
9	informed Ms. Nahabedian that the training was being	through 23.
10	performed to "avoid liability."	
11	435. Then Chief Stehr told Ms. Nahabedian that	Nahabedian Deposition, Page 26, Lines 13
12	the prior diversity training had occurred over ten	through 24.
13	years ago, in or about 1997.	
14	436. Many negative comments were made by	Nahabedian Deposition, Page 40, Lines 12
15	Burbank Police Department Officers following the	through 22.
16	training, which negative comments referred to the	
17	training.	
18	437. Many negative comments refer to the	Nahabedian Deposition, Page 42, Lines 3
19	impression that the diversity training was to "CYA"	through 11.
20	or "cover your ass."	
21	438. Another common complaint of Burbank	Nahabedian Deposition, Page 42, Lines 12
22	Police Officers with regard to the diversity training	through 15.
23	was "they should deal with those few people with a	
24	problem and not have us all sit in training."	
25	439. Another common complaint was that	Nahabedian Deposition, Page 43, Lines 5
26	minorities played the "race card," when they didn't	through 12; Page 46, Lines 9 through 19.
27	get promotions.	
28	·	
	136	·

1	440. Another common complaint of Burbank	Nahabedian Deposition, Page 43, Line 21
2	Police Officers who attended the diversity training	through Page 44, Line 3.
3	was "why do we have to change the way we do	
4	things? If they came to this country, we shouldn't	
5 .	have to learn about their ways."	
6	441. Nahabedian was concerned by the overly	Nahabedian Deposition, Page 49, Lines 5
7	large number of Burbank Police Officers who	through 20.
8	expressed concerns of the diversity training.	
9	442. Many Burbank Police Officers told Ms.	Nahabedian Deposition, Page 52, Lines 7
10	Nahabedian at the end of the diversity training that it	through 10.
11	was "a waste of time."	
12	443. Burbank Police Officers who attended the	Nahabedian Deposition, Page 54, Lines 2
13	diversity training made jokes about the diversity	through 8.
14	training.	
15	444. Nahabedian expressed to the Burbank Police	Nahabedian Deposition, Page 55, Line 25
16	Department that more training needed to be done to	through Page 59, Line 8; Page 60, Lines 11
17	deal with diversity issues.	through 19; Page 60, Line 20 through Page
18		61, Line 7.
19	1°CC (D. 1 1 D.1°	
20	445. As many as twenty different Burbank Police	Slor Deposition, Page 28, Lines 8 through
21	Officers regularly use the term "ZOG" to refer to	11; Dahlia Deposition, Page 121, Line 7
22	Black people. Slor recalls such term being used at	through Page 122, Line 2.
23	least a few years ago.	
24	446. The term "ZOG" is a racial term describing	Omar Rodriguez Deposition, Page 367,
25	any minority. It is used by white supremacist groups	Line 18 through Page 368, Line 12. Omar
26	to call minority groups a hateful term.	Rodriguez Deposition, Page 376, Line 13
27		through Page 377, Line 7.
28		

. 1	447. Burbank Police Officers have called African-	Dahlia Deposition, Page 123, Lines 5	
2	Americans "Black Mother Fuckers, over the past	through 13.	
3	twenty years."		
4	448. Many Caucasian Burbank Police Officers	Dahlia Deposition, Page 123, Lines 23	
5	regularly refer to Blacks as "Niggers." Over the past:	through 25; Dahlia Deposition, Page 131,	
6	twenty years, Detective Dahlia has personally used	Lines 6 through 9; Dahlia Deposition,	
7	the term "Nigger" to refer to black people while he	Page 145, lines 19 through 23; Murphy	
8	was working at the Department.		
9		Deposition, Page 84, lines 8 through 14.	
10	449. In November 2008, in front of assembled	Murphy Deposition, Page 54, line 7	
11	group of Lieutenants, Captains, the Deputy Chief,	through 19; O. Rodriguez Decl., 47, 9:22-	
12	and high ranking civilian employees, then Chief Tim	25; ¶48, 9:26-10:1.	
13	Stehr opined that he could "remember a time when		
14	they would say 'nigger' at roll calls." When Chief		
15	Stehr later discussed the incident with Omar	·	
16	Rodriguez and asked what he thought, Lt. Rodriguez		
17	said that the use of the word was offensive. Chief		
18	Stehr responded angrily, "Fuck me!" and walked out		
19	of the room.		
20	450. Plaintiff Elfego Rodriguez heard from	E. Rodriguez Decl. ¶9, 3:9-11.	
21	various police officers that then Chief Tim Stehr		
22	made the comment "I remember a time when you	\	
23	could say the word 'nigger' around here.") te	
24	451. Then Chief Stehr had made other	Valento Deposition, Page 56, Lines 4	
25	inappropriate race-based jokes at the Burbank Police	through 19.	
26	Department.		
27	452. The word "Nigger" was used by Burbank	Arnold Deposition, Page 37, lines 19	
28	Police Officers just like "common conversation."		
÷	138		
	PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION		

	1		through 21.
	2	453. African Americans have been referred to as	Omar Rodriguez Deposition, Page 374,
•	3	"Niggers" by Burbank Police Officers.	Line 23 through Page 375, Line 2. Omar
	4		Rodriguez Deposition, Page 376, Line 13
	5		through Page 377, Line 3. Deposition of
	6		Cindy Guillen-Gomez Deposition, Page
	7		
	8		670, Line 22 through Page 671, Line 25
	9		attached to Thompson Decl. as Exhibit
	10		"M".
	11	454. Officers were discussing an African-	Arnold Deposition, Page 39, line 6 through
	12	American woman who had been seen in the South	Page 41, Line 9.
	13	end of Burbank. In front of the assembled officers at	
	14 15	roll call, one officer called out "what's she doing up	
	16	there, there ain't no fried chicken stores up there."	
	17	455. In a conversation referring to a male, black	Karagiosian Deposition, Page 277, Line 9
	18	suspect, one officer commented "we should go check	through 22; Omar Rodriguez Deposition,
	19	Popeye's Chicken."	Page 23, Line 2 through 15.
	20	456. The following race-based "joke" was told by	Arnold Deposition, Page 49, lines 14
•	21	Burbank Police Officers: "What do you call a black	through 16.
	22	man sitting in a tree with a bunch of monkeys?" The	Xe Xe
	23	punchline was "Branch Manager."	
	24	457. Another race-based "joke" told by Burbank	Arnold Deposition, Page 49, lines 17
	25	Police Officers was: "What do you call 1,000 niggers	through 19.
	26	at the bottom of the ocean? Answer: A good start."	
	27	458. Another race-based "joke" that was told by	Arnold Deposition, Page 49, lines 20
	28	Burbank Police Officers was: "A football field of	
		139 PLAINTIFF'S SEPARATE STATEMENT OF D	ISPUTED FACTS IN OPPOSITION

mgge	ers buried up to their necks? Afro-Turf."	through 21.
459.	Burbank Police Officers have referred to	Dahlia Deposition, Page 122, Line 8
Blac	k individuals as "Miate."	through Page 123, Line 4; (possibly with
		the last year (December 22, 2008 –
		December 22, 2009).)
460.	Officers at the Burbank Police Department	Arnold Deposition, Page 53, line 20
have	referred to Black people as "Sambo."	through Page 54.
461.	Burbank Police Officers have referred to	Arnold Deposition, Page 53, line 20
Blac	k people as "Porch Monkeys."	through Page 54, Line 2.
462.	Burbank Police Officers would refer to	Arnold Deposition, Page 72, lines 4
mixe	ed race individuals as "half-breeds."	through 8.
463.	In approximately 2003, a black female police	Deposition of Former Mayor of the City
offic	er complained to then, City Council member	Burbank, Marsha Ramos, Page 19, Lines
Mar	sha Ramos that there is "no room for promotion"	through 15.
for E	Blacks or females within the Burbank Police	
Dep	artment.	
464.	When Nahabedian was hired, she was	Nahabedian Deposition, Page 30, Line 1
info	med by then Chief Stehr that there were	through Page 31, Line 5.
prob	lems with race-based language in the	
Dep	artment including, without limitation, the "N"	<i>λ</i> Ω
word	i.	
465.	Sergeant Darren Ryburn has said "I guess it's	Deposition of Childs, Page 51, Lines 2
true,	once you go black, you never go back."	through 11 attached to Thompson Decl.
		Éxhibit "N".
466.	When Plaintiff Jamal Childs who is African-	Childs Deposition, Page 69, Line 19

1	American assisted in the service of a warrant on the	through Page 70, Line 4.
2	famous rapper, Snoop Dog, Officer Aaron Kendrick	
3	said, "Why is Jamal here? Do we need him for	
4	translation?"	
5	467. After passing by an open doorway of an	Childs Deposition, Page 112, Line 14
6	office in the Burbank Police Department, Jamal	through Page 113, Line 7.
7	Childs, who is African-American heard unknown	
8	officers state "I remember when we didn't hire	
9	people like him."	
10	468. Upon entering a room one time, Officer	Childs Deposition, Page 115, Lines 14
11	Childs learned that Officer Jay Cutler had said "who	through 19.
12	let the black guy in?" which the other officers who	
13	were present found funny.	
14	469. One of Plaintiff Jamal Childs supervisors,	Childs Deposition, Page 121, Line 3
15	Sergeant Calicchio, after taking an arrest report, said	through Page 122, Line 16.
16	"who in their right mind would give a fucking black	
17	guy \$30,000?"	
18	470. Burbank Police Officers have referred to	Slor Deposition, Page 31, Line 19 through
19	Armenian individuals as "Armo's."	Page 32, Line 4 (within the last 2 years
20		(November 11, 2007 – November 11,
21		2009); Dahlia Deposition, Page 135, Lines
22		ļ. ***
23		5 through 15 (within the last years
24		November 11, 2008 – November 11,
25		2009). Karagiosian Deposition, Page 300,
26		Line 21 through 25. Omar Rodriguez
27		Deposition, Page 377, Line 2 through 13.
28		1,
	1 <i>A</i> 1	

Ì		Omar Rodriguez Deposition, Page 384,
		Line 23 through Page, 385 Line 12.
	471. Burbank Police Officers have referred to	Slor Deposition, Page 31, Line 19 through
	Armenian individuals as "Towelheads."	Page 32, Line 4 (within the last year
		(December 22, 2008 – December 22,
		2009); Dahlia Deposition, Page 132, Line
		6 through Page 133, Line 2 and Dahlia
		Deposition, Page 133, Lines 20 through 22
		(within the last two years (November 11,
		2007 - November 11, 2009); Arnold
		Deposition, Page 57, lines 2 through 5.
	472. Burbank Police Officers would call	Karagiosian Deposition, Page 169, Line 19
	Armenians "towels."	through Page 170, Line 1. Karagiosian
		Deposition, Page 302, Line 16 through 18.
	473. Officer Kendrick has called Officer Steve	Childs Deposition, Page 62, Line 21
	Karagiosian a "towel" and "stupid towel" on	through Page 63, Line 4; Page 119, Lines 2
	numerous occasions.	through 19.
	474. Many Burbank Police Officers have referred	Dahlia Deposition, Page 132, Line 6
	to Armenian individuals as "Fucking Armenians."	through Page 133, Line 2; Dahlia
	****	Deposition, Page 134, Lines 14 through 23
		(within the last year (December 22, 2008 –
		December 22, 2009.))
,	475. Burbank Police Officers would make fun of	Arnold Deposition, Page 67, lines 3
	Armenians by speaking in a heavy Armenian accent.	through 14; Karagiosian Deposition, Page

1		42, Line 16 through Page 43, Line 15.
2	476. Officer Aaron Kendrick pointed a gun at	Karagiosian Deposition, Page 145, Line 16
3	Officer Steve Karagiosian and threatened to "put one	through Page 146, Line 7; Childs
4	in your ten ring before you can get out of your	Deposition, Page 81, Line 21 through Page
5	chair."	82, Line 16.
6		
7	477. Offensive race based slurs against Armenians	Karagiosian Deposition, Page 92, Line 20
8	were written on a white board in the Detective's	through Page 93, Line 4. Omar Rodriguez
9	Office at the Burbank Police Department.	Deposition, Page 339, Line 4 through Page
10		340, Line 11.
11	478. Burbank Police Officers have referred to	Dahlia Deposition, Page 129, Lines 6
12	Hispanic individuals as "Wetbacks."	through 17 (within the last year (December
14	-	22, 2008 – December 22, 2009)); Murphy.
15		Deposition, Page 82, lines 13 through 20;
16		Arnold Deposition, Page 59, lines 15
17		through 18; Omar Rodriguez Deposition,
18		Page 369, Line 10 through 17; Omar
19		Rodriguez Deposition, Page 374, Line 23
20 21		through Page 375, Line 2.
22	479. As many as twenty Burbank Police Officers	Dahlia Deposition, Page 129, Line 24
23	have referred to Hispanic individuals as "Mojados,	through Page 131, Line 6 (December 22,
24	Moes or Mopes" within the last year.e	2008 – December 22, 2009).
25	480. Burbank Police Officers have referred to	Karagiosian Deposition, Page 336, Line 18
26	Latinos as "Moes, within the last year."	through 19 (December 22, 2008 –
27		
28		December 22, 2009).
	143	
	PLAINTIFF'S SEPARATE STATEMENT OF D	ISPUTED FACTS IN OPPOSITION

1	481. Burbank Police Officers have referred to	Dahlia Deposition, Page 131, Lines 10
2	Hispanic individuals as "Spics."	through 12.
3	482. Burbank Police Officers have called Hispanic	Dahlia Deposition, Page 197, lines 18
4 5	individuals "Julios."	through 25. Karagiosian Deposition, Page
6		303, Line 13 through 15. Omar Rodriguez
7		Deposition, Page 369, Line 10 through 17.
8	483. Burbank Police Officers have referred to	Dahlia Deposition, Page 201, lines 10
9	Hispanic individuals as "Beaners over the past	through 19; Murphy Deposition, Page 82,
10	twenty years."	lines 24 through Page 83, line 3.
11	484. Burbank Police Officers have referred to	Dahlia Deposition, Page 203, lines 9
12 13	Hispanic individuals as "Fucking Mexicans."	through 12.
14	485. Burbank Police Officers have referred to	Murphy Deposition, Page 83, lines 5
15	Hispanic individuals.as "Taco Vendor".	through 9.
16	486. Hispanics have been referred to by Burbank	Karagiosian Deposition, Page 305, Line 10
17 18	Police Officers as "Gardeners."	through 12.
	487. Hispanic individuals were referred to by	Arnold Deposition, Page 57, lines 10
19 20	Burbank Police Officers as "Paco."	through 20.
21	488. Burbank Police Officers referred to Hispanic	Dahlia Deposition, Page 202, lines 9
22	individuals as "Mexicans," regardless of their	through 24 (December 22, 2008 –
23	country of origin within the last year.	December 22, 2009); Arnold Deposition,
24		Page 53, lines 1 through 14.
25	489. The term "Mexican" is used interchangeably	Dahlia Deposition, Page 202, lines 9
26	by Burbank Police Officers with the terms "Latino"	through 24 (December 22, 2008 –
27	or "Hispanic within the last year."	December 22, 2009); Arnold Deposition,
28		
	144	

. 1		Page 53, lines 1 through 8.
2	490. Detective Dahlia has referred to Latinos as	Dahlia Deposition, Page 202, line 25
. 3	"Mexicans," without knowing their country of origin	through 203, line 8 (December 22, 2008 –
4 55-	perhaps in the last year.	December 22, 2009).
6	491. One of the race-based "jokes" told by	Arnold Deposition, Page 50, lines 20
7	Burbank Police Officers was as follows: "How come	through 25.
8	there were only 2,000 Mexicans at the Alamo?" The	
9	punchline was: "There was only one car."	
10	492. Hispanic suspects were booked in to the	Arnold Deposition, Page 68, lines 16
11	records at the Burbank Police Department as "Juan	through 20.
12	Doe."	
13	493. Burbank Police Officers have stated "Why do	Karagiosian Deposition, Page 287, Line 1
14	we have Mexicans in our city? Look at the places	through 11.
15	they live. They fucked that up. "	
16	494. Burbank Police Officers refer to Asian	Arnold Deposition, Page 80, lines 9
17	people with the language "me fucky-sucky."	through 15.
18	495. Burbank Police Officers would joke about	Arnold Deposition, Page 80, lines 22
19	Asian people by saying things in an Asian accent	through 25.
20	like "Hey, Joe," "you like good time, Joe?" The	
21	word "Joe" was used a lot.	
22,	496. Plaintiff Cindy Guillen-Gomez has been	Slor Deposition, Page 49, Lines 11 through
23	referred to by Burbank Police Officers as "Bitch."	23.
24		
25	497. Burbank Police Officers have referred to	Dahlia Deposition, Page 198, lines 9
26	women as "dykes."	through 16; Murphy Deposition, Page 85,
27 ···		lines 13 through 19.
28		
٠,	145	•

-1	498. Burbank Police Officers would opine that	Arnold Deposition, Page 69, lines 15	
2	"women had no business being on the police force."	through 18.	
3	499. Plaintiff Cindy Guillen-Gomez complained	Arnold Deposition, Page 91, lines 5	
4	that females were being referred to by Burbank	through 10.	
5	Police Officers as "Tuna Boats."		
6	500. Plaintiff Cindy Guillen-Gomez complained	Arnold Deposition, Page 91, lines 5	
7.	that females were being referred to by Burbank	through 10.	
8	Police Officers as "Split Tails."		
9	501. Police Officers at the Burbank Police	Guillen-Gomez Deposition, Page 668,	
10	Department have used the term "cunt" to refer to	Line 25 through Page 669, Line 4.	
11	women.		
12	502. Certain Burbank Police Officers have called	Guillen-Gomez Deposition, Page 669,	
13 14	women "whores."	Line 19 through 21.	
15	503. Plaintiff Cindy Guillen-Gomez was	Guillen-Gomez Deposition, Page 680,	
16	threatened that if she wouldn't be quiet she would be	Line 24 through 25.	
17	"fucked in the ass."		
18	504. One example of sexual harassment, Ms.	Nahabedian Deposition, Page 62, Line 14	
19	Nahabedian discovered was naked pornographic	through Page 63, Line 4.	
20	pictures on a certain Burbank Police Officer's		
21	locker.		
22	505. Burbank Police Officers have referred to men	Dahlia Deposition, Page 199, lines 19	
23	as "homos within the past twenty years."	through 21. Guillen-Gomez Deposition,	
24		Page 670, Line 8 through 10.	
25	506. Lieutenant Murphy has heard people being	Murphy Deposition, Page 85, lines 5	
26	referred to as "Fags" by Burbank Police Officers.	through 11.	
27	507 Downloads Dalies Off		
28	507. Burbank Police Officers would refer to	Arnold Deposition, Page 60, line 23	
	146		
•	PLAINTIFE'S SEPARATE STATEMENT OF DISPLITED FACTS IN OPPOSITION		

1	individuals as "fag" or "faggot."	through Page 61, Line 1. Guillen-Gomez
2		Deposition, Page 670, Line 8 through 10.
3	508. Burbank Police Officers have engaged in	Slor Deposition, Page 53, Lines 5 through
4 .	racial profiling, that is identifying and stopping	14.
. 5	people based on their race in order to search for	
6	evidence of a crime.	,
7	509. The minorities which are subjected to race-	Slor Deposition, Page 53, Lines 16 through
8	based profiling at the Burbank Police Department are	25.
9	Hispanic, Black and Armenian.	
10	510. One Burbank Police Officer mocked a black	Arnold Deposition, Page 44, line 13
11	youth, who had been pulled over by Burbank Police	through Page 46, Line 6.
12	Officers approximately five times in his evening trip	
13	through Burbank on his bicycle, saying in an	
14	"ebonics" accent, "well, then don't ride your ass	
15	through Burbank at night."	
16	511. Burbank Police Officers target Armenian	Slor Deposition, Page 32, Lines 8 through
17 18	citizens for traffic stops based on race.	12.
19	512. One way the Burbank Police Department	Slor Deposition, Page 56, Lines 10 through
20	would profile Armenians, was to pull over high-end	20.
21	expensive cars because they lacked either front	
[™] 22	license plates or had tinted windows (minor	ं ज
23	violations) simply because they were being driven by	
24	Armenians.	
25	513. Burbank Police Officers would wait near	Arnold Deposition, Page 75, line 6 through
26	Armenian clubs and wait for individuals of	Page 76, Line 1.
27	Armenian descent to leave the club so they could	y'
28	affect traffic stops, and then they would joke about it	
	147	

1.	in an "Armenian type dialect."	
2	514. Burbank Police Department engages in race	Arnold Deposition, Page 79, lines 4
3	based profiling in police stops.	through 8. Karagiosian Deposition, Page
4		307, Line 22 through 25.
5	515 I 4 Once Political since consuming the	Omer Reduience Denogition Page 225
6	515. Lt. Omar Rodriguez, since approximately	Omar Rodriguez Deposition, Page 225,
7	January 2007, was responsible to recruit and hire	Line 23 through Page 226, Line 6. Page
8	officers for the Burbank Police Dept. Lt. Rodriguez	235, Line 3 through 8. Page 239, Line 13
9	became aware that the Detectives who had been	through Page 240, Line 6.
10	conducting the background investigations were	
11	inappropriately disqualifying minorities and females	
12	from the background process.	
13	516. Beginning in approximately December 2006,	Omar Rodriguez Deposition, Page 248,
14	through January 2007, Lt. Rodriguez began getting	Line 23 through Page 249, Line 12.
15	complaints from officers that they had been	
16	subjected to unfair treatment and race-based	
17	comments. Lt. Rodriguez continued to receive these	
18	complaints through April 2009.	
19	517. Lt. Omar Rodriguez reported complaints of	Omar Rodriguez Deposition, Page 319,
20	patrol officers of unfair treatment, harassment and	Line 9 through Page 320, Line 14.
21	discrimination to then Chief Tim Stehr on more than	
22	a dozen occasions, several times in writing.	
23	518. On Easter Sunday, 2009, Omar Rodriguez	Deposition of Former Mayor of the City of
24	complained to then Mayor Marsha Ramos of	Burbank, Marsha Ramos, Page 23, Line 22
25	problems within the Department including, without	through Page 24, Line 24.
26	limitation, discriminatory hiring practices.	
27	519. On Easter Sunday, 2009, Omar Rodriguez	Deposition of Former Mayor of the City of
28	complained to then Mayor Marsha Ramos that Bill	Burbank, Marsha Ramos, Page 25, Line 3
	148	
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PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED FACTS IN OPPOSITION

• 1		
1	Taylor (Deputy Chief) was going to be unfairly	through Page 26, Line 1; Page 26, Lines 2
2	demoted and blamed for problems within the	through 10.
.3	Department in exchange for favors to certain officers	
4 .	on the Burbank Police Officers' Association.	
5 .	520. Then Deputy Chief Bill Taylor complained to	Deposition of Former Mayor of the City of
6.	then Mayor Marsha Ramos that the police	Burbank, Marsha Ramos, Page 37, Lines 2
7	department had issues of discrimination and	through 12.
8	retaliation and "it's an environment where people are	
9	fearful."	
10	521. On Easter Sunday, 2009, Omar Rodriguez	Deposition of Former Mayor of the City of
11	complained to then Mayor Marsha Ramos that he	Burbank, Marsha Ramos, Page 40, Line 16
12	was afraid of retaliation within the Burbank Police	through Page 41, Line 3.
13	Department.	and again age (1, same s)
14	522. In December, 2009, after former Mayor	Deposition of Former Mayor of the City of
15	Marsha Ramos left office, she met with City	Burbank, Marsha Ramos, Page 51, Line 16
16	Manager, Mike Flad at lunch. At that time, Mike	through Page 52, Line 23.
17	Flad informed her that the City's internal	anough rugo ob, same bot
18	investigations, along with the Sheriff's Department	
19	and FBI investigations would wrap up in the first	
20 .	quarter of 2009, and "there were going to be a lot of	
21	terminations, top to bottom," regardless of the results	· ·
22	of the investigations.	\(\frac{1}{2}\)
23	523. There was a widespread and very big	Valento Deposition, Page 25, Line 25
24	problem within the Burbank Police Department	through Page 26, Line 21.
25 .	concerning the Department's failure to respond to	
26	complaints from officers and with retaliation.	
27	524. Burbank Police Officers are subjected to	Valento Deposition, Page 28, Line 2
28		

retaliation for standing on their rights.	through Page 29, Line 9.
525. Then Chief Tim Stehr would retaliate against	Valento Deposition, Page 29, Lines 19
Burbank Police Officers who complained by	through 25.
changing their performance reviews.	
526. At the time of the filing of the Complaint in	Dahlia Deposition, Page 205, Lines 4
this action, the Burbank Police Department had four	through 20.
(4) sworn African-American police officers, just	
over two percent (2%).	
527. No African-American police officer has ever	Dahlia Deposition, Page 205, Lines 4
received a promotion of any kind in the history of	through 20.
the Burbank Police Department.	
2 528. As of year end 2009, twelve percent (12%) of	Thompson Decl., Exhibit "A".
all police officers employed at the Los Angeles	
Police Department ("LAPD") were African-	
5 American.	
6 529. As of year end 2009, between twelve percent	Thompson Decl., Exhibit "A".
7 (12%) and eighteen percent (18%) of all police	
officers employed at the Los Angeles Police	
Department ("LAPD") of rank Detective or higher	
were African-American.	
1 530. As of year end 2009, ten percent (10%) of all	Thompson Decl., Exhibit "A".
police officers employed at the Los Angeles	***
Sheriff's Department were African-American.	
4 531. As of year end 2009, eighteen percent (18%)	Thompson Decl., Exhibit "A".
of all police officers employed by the Pasadena	
Police Department were African-American.	
7 532. Burbank Police Officer Supervisors	Karagiosian Deposition, Page 323, Line 6
PLAINTIFF'S SEPARATE STATEMENT OF	DISPLITED FACTS IN OPPOSITION

1	discriminate against minorities in terms of		through Page 325, Line 3.
2	assignments and shift selection.		
3	533. As of the last statistical report don	e on the	Thompson Decl., Exhibit "A".
4	composition of the BPD in 2000, Hispani	c officers	
5	comprised just ten percent (10%) of the B	PD force,	
6	while their counterparts at the LAPD held	l almost	
7.	one third (33%) of the available positions	, those at	
8	the LASD held 26 percent (26%) of all po	sitions,	
9	and those at the PPD held thirty percent (30%) of all	
10	positions.		
11	534. In December, 2009, City Manager	, Mike	Ramos Depo., 51:16 through 52:18.
12	Flad, told former Mayor, Marsha Ramos, that		
13	officers would be fired "top to bottom," re	egardless of	
14	the outcome of the investigation.		
15	535. Deputy Chief Bill Taylor told City	Manager,	Taylor Decl., ¶14, p. 5, line 26 through p.
16	Mike Flad, that Chief Stehr was retaliator	y against	6, line 4.
17	the "minority officers" by disbanding SEI	Э.	
18			
19	Dated: April 28, 2010 LAV	W OFFICES	9F RHEUBAN & GRESEN
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21	By:	/ VI (The state of the s
22	Atto	Robert C. Hayden Attorneys for Plaintiffs	
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